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Volume

1

PRINCE EDWARD ISLAND

"Everything Before Us"

Volume 1

Report of the

Royal Commission on the Land

Douglas B. Boylan
Chairman

October, 1990

Prince Edward Island

"Everything Before Us"

Volume 1 of the Report of the
Royal Commission on the Land

Douglas B. Boylan
Chairman

Gail E. Wellner
R. Elmer MacDonald
Hugh M. Robbins
Commissioners

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1990

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Prince Edward Island.

ROYAL COMMISSION ON LAND OWNERSHIP, LAND USE AND THE LANDSCAPE.

[Working Title adopted: ROYAL COMMISSION ON THE LAND]

Appointed on 20 October 1988 by Order-in-Council No. EC614/88 pursuant to Sections 1 and 2 of the **Public Inquiries Act** [then R.S.P.E.I. 1974, Cap. P-30, and presently R.S.P.E.I. 1988, Cap P-21], and on the recommendation of the President of the Executive Council.

COMMISSIONERS: Douglas B. Boylan, Chairman, Gail E. Wellner, R. Elmer MacDonald, and Hugh M. Robbins.

RESEARCH DIRECTOR, AND, LEGAL COUNSEL: Marlene R. Clark

SECRETARY TO THE COMMISSION: Cheryl Stead

Report

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"It was the best of times, it was the worst of times, it was the age of wisdom, it was the age of foolishness, it was the epoch of belief, it was the epoch of incredulity, it was the season of Light, it was the season of Darkness, it was the spring of Hope, it was the winter of Despair. We had **everything before us**, we had nothing before us."

Charles Dickens, from the introduction to his **A Tale of Two Cities**, 1859.

Prince Edward Island

Royal Commission on the Land

Volume 1

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Honourable Joseph A. Ghiz, Q.C.
Premier, and, President
of the Executive Council
Government of Prince Edward Island
Shaw Building, Charlottetown

Dear Mr. Premier:

Pursuant to Order-in-Council No. EC614/88 of 20 October 1988, the undersigned Royal Commissioners have the honour to present our unanimous recommendations on various matters relating to "The Land" of Prince Edward Island.

Respectfully submitted by:

(original signed by)
Douglas B. Boylan
Chairman

(original signed by)
Gail E. Wellner

(original signed by)
R. Elmer MacDonald

(original signed by)
Hugh M. Robbins

Charlottetown: October 10, 1990

COMMISSION OFFICE: 53 WATER STREET, CHARLOTTETOWN

Chairman's Preface

As Chairman of the Commission, I am indebted,

To my fellow Commissioners - **Gail Wellner, Elmer MacDonald** and **Hugh Robbins** - for the zest with which they addressed the many issues that confronted the Commission. Their patience with the Chairman, their determination to find practical recommendations in response to complicated issues and the goodwill surrounding our discussions is appreciated.

> To many individuals and organizations Island-wide who made determined efforts, in public presentations and in many private conversations, to make their concerns and views known.
>
> To the Honourable Premier and his Ministers, for their unfailing encouragement and tolerance for a Report some months delayed.
>
> To the many members of the Prince Edward Island Civil Service who responded, without apparent reservation, to a multitude of requests for information and for opinion. For those who may be skeptical as to the commitment and capacity of our public service, the response would be a relevation.
>
> To various departments and agencies of other provincial governments, and to many private and community organizations, for their prompt and comprehensive response to many questions posed.
>
> To the Institute of Island Studies at the University of Prince Edward Island, for an imaginative information programme at the outset of the Commission's work.
>
> And finally, to the two full-time staff members of the Commission. **Marlene R. Clark**, Research Director and Legal Counsel, displayed throughout her remarkable capacity for analysis and her delightful penchant for treating nonsense with the scorn it deserves. The framework for our discussions, the masses of background materials which we considered and the framing of the Report and its appendices are of her devising. **Cheryl Stead,** Secretary to the Commission, responded to our vagaries with her usual good humour and skills. I could not have wished for better assistants.

There are those, both within Prince Edward Island and without, that argue in the terms of doomsayers, that the "end is at hand" and that all that remains is for repentance. The Commissioners have identified and attempted to portray in this Report issues and practices of significant concern to the Island. But whether non-resident ownership, the ongoing gymnastics of the Irving interests, erosion, water and sewage, the declining quantum of agricultural land, mall construction or whatever, all is certainly not lost nor beyond repair. But the slippage of recent decades has resulted in current situations which can no longer be arrested by "band-aid" or piecemeal efforts.

Over and above all of the individual recommendations contained in this Report, it will be necessary for the Government of Prince Edward Island - in concert with other levels of government, with interest groups and with individual Islanders - to **manage** the well-being of the Island. *Laissez-faire* attitudes, or, indeed, benign neglect, toward land-related issues, from whatever particular interest group they may arise, will result in a continuing deterioration of what we like to think of as the "fair Island in the sea". Strong words, possibly, but merited in our present circumstances.

It will be readily apparent to anyone who reads our recommendations that implementation will require much **planning** and **management**. For some, it will raise the sceptre of "planning" which surrounded the development and implementation of the Comprehensive Development Plan in the late 1960s and 1970s. But a careful reading of our recommendations will show that while "planning" is crucial to all the areas of concern, it is "planning" which must be sensitive to the areas and issues concerned. At the least, it must be professional and consultative; and wherever possible, it must be participatory.

No one, especially in an intimate community such as Prince Edward Island, welcomes management for itself. But I am convinced that a tolerance now exists for a determined management approach to assure the preservation and strengthening of traditional aspects of Island life and landscape.

Management, then, is the essential follow-on from the development of policy and the planning process. It will involve, among other things, adequate public information materials, planning and field staff, tribunals and the ongoing involvement of Cabinet. The will and capacity to "manage" is crucial; no amount of statute law and regulations - however definitive - will suffice in the absence of ongoing management.

To respond to the Commission's recommendations in any adequate sense, Government must put in place a thoughtful and measured regime:

> **First**, to ponder and evaluate the recommendations both at the Cabinet level and by the departments and agencies concerned.
>
> **Second**, after evaluation, Cabinet should devise and make public policy statements setting down, in general language, the goals of government in pursuing a determined policy on land-related matters, thus **leaving no doubt as to Government's intent.**
>
> **Third**, once general policy is both determined and announced, departments and agencies should be instructed to devise specific proposals for implementation. Such proposals would include necessary legislative changes, policy definition, means for programme delivery and an estimate of likely costs. Given the inevitable interdepartmental considerations, it may be advisable to establish some form of coordinating committee to oversee the development of implementation proposals.
>
> **Fourth**, a second round of Cabinet consideration would follow, to respond to the specific proposals mentioned above, and leading to authorization for implementation.

The announced, year-long review of the services and structure of the Government of P.E.I. may well be a means for determining a response to this report.

Assuming that public participation will be an integral part of the policy and delivery formulation, it is assumed that adequate means for public input will be devised, particularly at the second and third stages.

Again, there is no doubt that an adequate response to the Commission's recommendations will involve a major planning and operational change for the Island government. We are, surely, beyond the stage of problem identification: a half-day car drive around and about Charlottetown would suffice to see most of the problems. There has been - and continues to be - no doubt as to the general commitment of successive Island governments to the well-being of our people and land. Government, I suggest, should approach these matters **anew** and not through the focus of existing statutes, regulations and practices. This is not to suggest that all existing statutory instruments and practices are deficient but, rather, that new policy is not best developed within the blinkers of existing policy.

I would argue that governments, since the enactment of the *Lands Protection Act*, have placed an inordinate reliance on statutory and other instruments to "police" the general prohibition (though rarely applied to those who petition) of nonresident ownership and the maximums imposed on corporations and individuals. The essential administrative devices (adequate staff and sound data are but two examples) to complement the statutory instruments have been totally inadequate. Government, then, must shift from a primary reliance on statute to the creation of an administrative regime which would combine statutory instruments and a staff capacity to enforce and support policy. Any such shift will be demanding of time, thought and the limited resources of the treasury. But the alternative is continuing confusion and decline.

The work of the Commission has concluded in the midst of uncertainties as to world orders and of considerable tension within the Canadian nation. Traditional ideologies arising from the Industrial Revolution are in disarray, whether Marxist, socialist or capitalist. For those inclined to despair, the material for lament is readily at hand. But for those inclined to see recent events as an opportunity to move beyond dated means and methods, it is indeed "The Best of Times".

Very real constraints exist on the Province's expenditure capacity, restraints which are unlikely to decrease in the foreseeable future. In large part, the strains are due to a determined effort on the part of the Government of Canada to diminish the levels of transfer payments to the provinces and to the continuing escalation in demand and costs for social programmes. This may well be confounded by the uncertainty, much more real than imagined, created by the existing constitutional quagmire.

The Commission's recommendations, if implemented, will require a measure of additional (or diverted) provincial funding. And other recommendations, particularly on land-related matters, may well attract *Charter* challenges in this age of increasing litigation.

Successive Island governments have attempted a balancing act between individual concerns and the larger, community need. One classic example has been the response to the ongoing demand for additional road accesses to private dwellings as opposed to the necessity for maintaining an efficient road network for both passenger and commercial vehicles. Historically, our governments have leaned in favour of the individual, for understandable reasons. But the magnitude of the problems, both existing and on the horizon, are such that Government **must** shift from responding all-too-often to individual petitions to a concern for the **general well-being of the Province**. For individual concerns, bolstered to some extent by the Charter of Rights, have an inherent potential to diminish legitimate community interest. Exceptions to policy - once it is determined and enunciated - must be rare, and contemplated only in the most unusual of circumstances.

The Commission's recommendations place much emphasis on action by government. But government action is only one part of the equation which will assure the continuance of "our land" as we wish it both in our hearts and in our minds. All too often, my experience has been of what a former Premier described as the "geometric increase" in the expectations placed on government, a "what have you done for me today???" attitude. The concept of government acting almost *in loco parentis* on a wide range of matters, so much a feature of the post-Depression period, must be substantially reworked. If the multitude of concerns which confront us are to be addressed, the burden cannot be solely that of government. **A major component** must be that of individual support and involvement in both the planning and the implementation.

The temptation will exist, I suspect, for some readers of this Report to blame the **present** Government of Prince Edward Island for the ills we have identified. In most cases, the concerns which we have identified and, hopefully, addressed have accumulated over a score of years. Thus, the actions (or, more properly, lack of actions) are not, in the general sense, attributable to any one government.

As to the prevailing mood, my sense is that Islanders are not only expecting a concerted and comprehensive effort on the part of Government but are prepared to tolerate (if not welcome) the regulation that **will** be required to assure the quality of life and landscape that most desire. One of the individuals who presented a brief to our public hearings suggested the need for a new "vision" of Prince Edward Island. Such a vision would encompass the strengths from our past with what might be called contemporary realities - a building-upon our past and, as has happened so often in our experience, adaptation to the future.

For years, we have been dipping into our capital in most areas relating to our "land". We are **not** at the point of bankruptcy, but such an end is not that far off. It becomes, then, a **matter of will** for Islanders and their Government. The time has come to cease the talk and to tend the garden.

TERMS OF REFERENCE

Certified to be a true copy of an Order of His Honour the Lieutenant Governor in Council dated 20 October 1988.

No. EC614/88

PUBLIC INQUIRIES ACT
ROYAL COMMISSION ON LAND OWNERSHIP, LAND USE AND THE LANDSCAPE
COMMISSION ESTABLISHED
APPOINTMENT OF COMMISSIONERS
AND
TERMS OF REFERENCE ASSIGNED

On recommendation from the Honourable Premier and President of the Executive Council and pursuant to the *Public Inquiries Act* R.S.P.E.I. 1974 Cap. P-30, Council advise that a Commission do issue establishing an inquiry into and relating to the ownership and use of land and the quality of the landscape in Prince Edward Island.

Further, Council advise that Douglas B. Boylan, Charlottetown, Gail Wellner, Charlottetown, Elmer MacDonald, Augustine Cove, and Hugh Robbins, Montague be Commissioners, and, that Douglas B. Boylan be Chairman and executive officer.

And further, Council advise that the inquiry, without limiting the generality of the scope of its mandate, be directed to examine, inquire into and report upon:

a) the major changes and the impact those changes have had in land ownership, land use and the quality of the landscape since the inquiry of 1973 into land ownership and land use;

b) all existing legislation pertaining to land use, particularly that relating to ownership by non-residents;

c) the relationship of property taxation to land ownership and land use;

d) land use and quality of landscape issues in relation to the proposed "fixed-link" crossing;

e) the relationship between the quality of landscape and Government policy respecting roadside advertising; and

f) any matter or subject which the Commissioners may feel to be relevant to the subject of the inquiry.

And further, Council advise that the Commission be directed to seek the views of individuals and organizations concerned with the subject matter of the inquiry.

And further, Council advise that the Commissioners be empowered:

a) to adopt such procedure and methods as they deem appropriate for the proper conduct of the inquiry;

b) to exercise all of the powers conferred upon them by the *Public Inquiries Act*;

c) to engage the services of such staff and to rent such premises as the Commissioners may consider necessary for the operation of the inquiry; and,

d) to be assisted by the officers and employees of the departments and agencies of the Government of Prince Edward Island as may be required for the conduct of the inquiry.

And further, Council advise that the inquiry be established as of 1 November 1988 and that the Commissioners be directed to submit their report no later than January 31, 1990.

[original signed by]

Diane I. Blanchard
Clerk of the Executive Council

FOREWORD

The Royal Commission on Land Ownership, Land Use and the Landscape[1] was established on October 20, 1988. In the interval between its creation and its final report, the number and variety of changes that have taken place - changes that affect the face of our entire province - provide graphic illustration of both the accelerated speed with which alterations are made in our milieu today and the timeliness of our examination of the issues and challenges presented in the Commission's terms of reference.

The Commission went about the business of carrying out its mandate in the midst of numerous other Royal Commissions, public inquiries and judicial investigations in other Canadian jurisdictions. Such inquiries as those into aspects of the justice systems of Manitoba, Nova Scotia and Newfoundland, the Dubbin Inquiry into the use of drugs in sports, the Patricia Starr inquiry and the federal Royal Commission into transportation have attracted widespread media attention. Many of these focused on determining factors about the behaviour of particular individuals in selective events or circumstances. In studying our Terms of Reference we were of the view that our mandate was of a different nature. The task facing us as a Royal Commission was not to assess blame, affix responsibility for previous decisions or inquire into wrong-doing so as to tarnish reputations, impute potential civil or criminal liability or otherwise accuse specific persons of improper behaviour. Moreover, the facts on which our mandate focused were, in a large measure, readily ascertainable from public records and documents, as well as from visual observations. Many facts were both self-evident and irrefutable. The effect of these facts on public opinion and perceptions was something far more intangible. Moreover, the mandate itself called for the Royal Commission to solicit "the views of individuals and organizations concerned with the subject matter of the inquiry". This is not to say that the Royal Commission was dismissive of past conduct or facts brought to its attention outside the public domain, but it is to say that we viewed our mandate as a futurist exercise - one that on balance called more for policy direction in the years ahead than for an assessment of past mistakes.

This perspective on our mandate very much affected both the structure and procedures of the inquiry phase of the Royal Commission and the type of report we offer to summarize our findings and conclusions.

Unlike some Royal Commissions, we did not begin with a preliminary "round" of public hearings to elicit public input into the various dimensions of the mandate. Such an exercise, we surmised, could be confusing to participants, many of whom might conclude their attendance in the preliminary hearing would constitute ample participation in the process and thereby render it unnecessary to come forward again for the actual public hearings at the inquiry stage. Secondly it was thought that a preliminary set of hearings might result in members of the public and organizations spending considerable time and effort in obtaining and assembling facts readily available or easily accessible to the Royal Commission from the public domain. For these reasons, the Royal Commission opted instead to obtain the services of the Institute of Island Studies at the University of Prince Edward Island. The Institute was asked to conduct informational seminars on the Royal Commission's mandate, with the seminars designed to provide participants with a foundation of the basic, essential facts regarding land use and land ownership and to stimulate their thoughts on the issues the Royal Commission was called upon to address.

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[1] For the sake of brevity and convenience, we shall refer to the Royal Commission throughout this Report as simply the Royal Commission on Land.

In accordance with our instructions, the Institute prepared a program under the title "Focus on the Land: Preparing for the Royal Commission". Its fact sheet proved to be useful not only for the seminars but as an informational brochure for anyone who made subsequent general inquiries to the Royal Commission about its task. A second and equally valuable tool prepared by the Institute was a 20-minute slide show presentation that indicated a few of the changes that had taken place in the Province over the past two decades. In a brief time capsule, this illustrated dramatically not only how much has changed in a very small slice of Island history but also how seemingly modest and incremental alterations could generate a wide web of perhaps unforeseen and unwelcome side-effects. The presentation also served to highlight a few of the problems that have caused concern in the experience of the former Executive Director of the Land Use Commission, Mr. John McClellan, who assisted the Institute in the preparation and delivery of this presentation. Over the space of several weeks, the Institute held some forty meetings with interested individuals, groups and organizations across the Province. This schedule included four public meetings held at the Westisle High School and in Summerside, Charlottetown and Montague. Questionnaires circulated by the Institute at these meetings were reviewed by the Institute staff and contained in its final report to the Royal Commission. (Appendix A of Volume 2 presents the Report by the Institute of Island Studies prepared for us at the conclusion of this program.)

We are of the view that this project increased the calibre of discussion and presentation made at our public hearings, for many of those who ultimately did come before the Royal Commission made reference to their participation in "Focus on the Land" and the ways in which discussions at these preliminary meetings had provoked them into giving additional consideration to the issues facing the Royal Commission. Unfortunately, the process confirmed to some extent the concerns we had that caused us to reject two-phase hearings; some participants who were most active and forthright in one or more of the Institute sessions did not respond further by appearing before the Royal Commission and its public hearings.

We would like to take this opportunity to thank the Institute of Island Studies for its assistance in this project and, in particular, to commend Ms Cathy Edwards, who coordinated "Focus on the Land"; Mr. Ian MacDonald, who chaired the public meetings; Mr. John McClellan, who provided his technical expertise and experience to the project; and Mr. Harry Baglole, who handled the administrative aspects on behalf of the Institute. Their diligence and enthusiasm resulted in an imaginative program that was assembled and executed on short notice and in a brief timespan with excellent results.

Public hearings for the Royal Commission were scheduled for April and May of 1989, but the demand for appearances was such that additional dates in June were also needed to facilitate all requests. (Appendix H in Volume 2 includes a list of these appearances.)

In keeping with our perception of our mandate and, in particular, with our direction to elicit opinions and perceptions from the public hearings, the Royal Commission opted to conduct these hearings most informally. Participants were asked to provide written submissions, preferably in advance of the hearing date for which their appearance was scheduled, but no appearances were denied for failure to comply with this procedure. Those who came before the Commission were not subjected to any formal rules of evidence and all testimony before the Commission was unsworn. Most participants were unaccompanied by legal counsel. Briefs were read into the record in most cases, although sometimes parts or, occasionally, the entirety of the written submission was taken as read. We provided ample opportunity for questions and answers between ourselves and participants and the resulting dialogue, although informal, was often very useful and thoughtprovoking.

In addition to the public hearings, we had the benefit of numerous private meetings. Some of these came at the request of individuals or groups who wished a private session. Other meetings enabled us to obtain the benefit of professional or technical experience in various aspects that affected the subject matter within our mandate.

The Commission met on sixty occasions in addition to the public hearings.

We would like to take this opportunity to thank all participants who appeared before the Royal Commission. Many citizens, whether in a private or volunteer capacity or in an employment mode, gave freely of their time, not only in their appearances, but in the effort and preparation that preceded their actual presentation. The quality and quantity of input into this process speaks of the priority many, many people have accorded the mandate assigned to us.

In addition to the input provided to us by way of presentations, we conducted our investigation in other ways. Three components were among the essentials of this aspect of the inquiry.

During the month of August, 1989, three of the Commissioners were involved in a programmed field work exercise throughout the Province. Each individually travelled some 1,000 kilometres over the course of three days. The exercise called for each Commissioner to tour an assigned scenic route and other areas in the remaining counties. While there was some flexibility in planning these routes and observation stop-offs, a pre-set questionnaire required that all the Commissioners would have an opportunity to view and report on their impressions and findings in relation to both urban and rural land uses and landscapes of various types. We found this exercise particularly useful, having had the benefit of the public hearings, for it provided us with the opportunity to visually observe the concerns that had been raised and to look at the Island from a heightened perspective and a new awareness. (A more detailed report on this exercise is found in Appendix B of Volume 2.)

A second and equally valuable field work exercise took place in September, 1989, when three Commissioners, accompanied by one staff member, travelled by highway through various portions of eastern Canada and the northeastern United States. Over a two-week period, we learned first hand of the land ownership, land use and landscape pressures and problems in a number of jurisdictions, as well as the measures that have been implemented or are being proposed to alleviate these problems.

Our route took us along the seacoast of Maine, where strip development has co-mingled with strong pressures for recreational or retirement properties along the seaboard, and to Cape Cod, where spectacular sand dunes and scenery, not unlike parts of Prince Edward Island, have created such popularity that there are now problems with water quality and quantity, seasonal traffic congestion and a host of other difficulties to be met. We visited areas in Massachusetts where the preservation of agricultural land has met with creative land-use measures. We viewed communities that were subjected to planning restrictions to control growth, to preserve historical or architectural features, and to enhance the liveability for all residents. In Vermont and New Hampshire we were able to compare and contrast the approaches used by two States, both historically rural and both very scenic but each demonstrating different ideologies in their respective approaches to land-use issues and the challenge of landscape preservation. From our meetings in upstate New York - one of the most rural areas in the United States with numerous tiny communities that are desperately trying to stimulate economic development - we learned of new approaches to provide professional capacity to rural municipalities and to meet the otherwise unaffordable costs of combatting environmental degradation. As we headed homeward, we attended a briefing session in Quebec City on the provincial property tax regime designed to preserve agricultural lands and thwart land speculation. (A more composite report of this tour is found in Appendix C of Volume 2.)

Our understanding of these land issues in other jurisdictions was greatly enhanced by the time and advice provided to us by the numerous professionals and public-spirited individuals we encountered on this trip. In particular, our thanks is extended to First Selectman Lee Pettingill and Selectmen Arthur Harvey, Roger Libby and Armand Rowe of Hartford, Maine; Mr. Bill Collins, Planning Director for the City of Dover, New Hampshire (and formerly Planning Director for Nags Head, North Carolina); Selectman Warren Flint, Jr. of Lincoln, Mass. (a registered landscape architect and president of Matlock Associates, a land use planning and design firm); Ms Katherine Preston, Executive Director, One Thousand Friends of Massachusetts; Mr. Armando Carbonell, Executive Director of the Cape Cod Planning and Economic Development Commission; Mr. Randall Arendt, Associate Director of the Centre for Rural Massachusetts; Mr. David A. Pilliod, Director of the Office of Local Government Services for the New York State Department of State; Ms Jane Schautz, Senior Project Director for the Rensselaerville Institute; Mr. Carl Barbec of Seward, New York; Messieurs Ben Coe, Waring Blackburn and Dan Beevers of the Tug Hill Commission of New York; Mr. Rod MacNeill, Coastal Development Specialist for the St. Lawrence - Eastern Ontario Commission; and M. Rejean Carrier and M. Jean-Louis Perras of the Ministry of Municipal Affairs for the Province of Quebec. The generosity and candor with which these people shared their knowledge and experience provided us with an enhanced appreciation of the challenges presented to this Royal Commission in our mandate.

Finally, as one component of our inquiry, we assembled and reviewed numerous informational materials relating to the various subject matters raised in our Terms of Reference. A compendium of such material includes relevant provincial statutes and regulations; reports prepared in connection with the fixed-link project; annual reports for various provincial government departments, agencies and commissions; statistical data from Statistics Canada and other sources; studies and reports done by or for government departments and other public and private bodies; newspaper, magazine articles; professional journals etc. As part of this exercise, our staff maintained a scrapbook of news clippings from local newspapers during much of the tenure of the Royal Commission. That this collection eventually mounted to more than 700 samples of reporting is but one small indicator of the prevalence of land issues in Prince Edward Island. (Appendix I of Volume 2 provides a more detailed listing of the many and varied informational materials collected in the course of fulfilling our assignment. All of this material will be deposited with an appropriate library at the conclusion of the Commission's work.)

In this aspect of our work, we owe thanks to numerous individuals whose interest in the work of the Royal Commission prompted them to bring to our attention a great assortment of literature relating to all manner of land ownership, land use and landscape issues. Many of these contributions related to other jurisdictions; a few were studies done earlier in Prince Edward Island. If we were to single out individual donors, we risk omitting someone inadvertently, so we shall say simply that all such contributions were much appreciated.

Finally, we would like to acknowledge the work of our staff both in the investigative aspects of our task and in the preparation of this Report.

PRINCIPLES AND CRITERIA

As the result of our investigation, we have come to the conclusion that there are a number of basic points that need to be stated at the outset. Some of these statements are so elementary as to be self-evident, while others are much more subtle. Our list is not meant to be an exhaustive one but it does represent a variety of the underlying considerations that we have attempted to keep in focus in dealing with the mandate entrusted to us.

This catalogue of what we have termed "principles and criteria" includes the following elements (the ordering for which is in no way reflective of the priority to which the particular statement has been assigned):

1. *The Province needs direction and policy formulation for the next decade.*
2. *The Government has a number of tools at its disposal in order to accomplish its objectives.*
3. *Government has a number of constraints that limit its ability to achieve its objectives.*
4. *Indecision is a form of land use planning, but it is usually the most costly one.*
5. *Any planning exercise needs careful consideration and widespread public acceptance if the plan is to succeed and have public endorsement.*
6. *Plans need to be devised neither from the top down nor from the bottom up but through a judicious mix of the two processes.*
7. *Land use provisions must endeavour to minimize conflict between residents by, wherever possible, establishing a course of action that will prevent these conflicts from arising.*
8. *There are conflicts, inherent in land use and land ownership issues, which cannot be resolved to the mutual satisfaction of all present and potential landowners.*
9. *Citizens would like precise, non-discretionary rules that cover all eventualities, but feel these rules are useless unless enforced.*
10. *While individual citizens like to see others regulated, they prefer freedom of choice for themselves. They will, however, accept rules for which there are good and valid reasons.*
11. *The future cannot be predicted with sufficient accuracy to guarantee the usefulness of any planning exercise for more than five or ten years. Even then, there must be scope within a plan to allow for changes.*
12. *Land ownership and land use issues are only part of a complex web of many other factors.*
13. *Environmental concerns are a major priority.*

14. *Demographic factors, as they exist now and as they may exist in the future, must be taken into account.*

15. *Non-urban areas are changing in unforeseen ways.*

16. *The past and present role of agriculture in the Province is a certainty; its future role is not.*

17. *Landscape is an essential component in the tourist industry.*

18. *Since resources are limited, we must strive to integrate the various sectors of our economy - agriculture, fisheries, tourism and forestry - so that two or more purposes may be served simultaneously as much as possible.*

19. *The Province has a responsibility, first and foremost, to its own residents: their priorities take a pre-eminent position above non-residents, even if non-residents may claim some previous ties with the Province.*

20. *Land speculation has consequences that, at best, create minor difficulties and, at worst, create distortions and disruptions in the orderly growth, management and development of land-based activities.*

Chapter 1

HISTORY AND BACKGROUND

Prince Edward Island is the smallest province in Canada, the second largest nation in the world - a country where open space is largely taken for granted. That perspective alone might give Islanders a valid reason for regarding land in a different light from other Canadians. As the Atlantic Provinces Economic Council (APEC) pointed out, at p. 4, in its "Assessment of the Prince Edward Island Economy in the Early 1980s",

> *If the Island is the smallest province in terms of total population, it is still the most densely settled. A population density in 1981 of 21.6 persons/km2 is almost 10 times the national average* density (2.6 persons/km2). Prince Edward Island also stands out as being the most rural of the provinces, with 64% of its population classified by the 1981 census as living in rural areas. This compares to about onequarter of all Canadians being rural dwellers. [Emphasis added.]

Coupled with this is the Island's dependence on its soil as the essential fuel for its entire economic base. Agriculture has been - and is - its number one industry, a claim only one other province can continue to make. Tourism, as an industry, is anchored in the visual appeals of an original landscape and supplemented by the superiority of Island beaches and sand dunes. Forestry, too, is very central to the Province's land base. Fishing, alone among our primary economic sectors, might be said to be distinct from our land - but even here, links with our soil are not as separate and apart as it might at first blush seem; loss of our soil through erosion has a negative effect on our shellfish, for example. To realize that the price of our farm commodities is directly correlated to the amount of sales tax revenue generated in a fiscal year is to be cognizant of the links in the system - and to appreciate, in part, why land issues are the cornerstone of the Island's continued concern for its real estate.

A third building block - and one that is often the starting point to explain why the ownership, uses and vistas of Prince Edward Island never fail to touch emotional chords - is the historical background that has long ago became known as The Land Question.

It is an issue well canvassed by students of Island history. A succinct description of the controversy was effectively capsulized by J. M. Bumstead in his article, "The Only Island There Is: The Writing of Prince Edward Island History", which was included in *The Garden Transformed: Prince Edward Island 1945 - 1980*, at pp. 16-17. Professor Bumstead wrote:

> Alone among British American colonies organized after 1750, the Island of St. John (as it was known until 1798) had its entire land surface divided into sixty-seven 20,000-acre lots or townships; these were allocated in advance of settlement to a relatively small elite group of proprietors, who were to be responsible for development. By the terms of their grants, the proprietors were required to settle a substantial number of Protestant non-British inhabitants and to pay an annual quitrent (which after 1769 was to be applied to the cost of the separate government

> granted the Island in that year); they became notorious for not fulfilling these terms, for becoming an entrenched landlord class with a vested interest (and the ear of the British government) in opposing reform of the land system, for exploiting the resident population, and for thwarting progressive development of the Island's resources. As Andrew Macphail wrote in 1913: "One approaches the land question with some hesitation; it is so tiresome" but, he hastened to add, "for over a century it overshadowed all others in the politics and history of the Island."

The pre-eminence of this issue in its day is illustrated by the number of historical texts which, even today, continue to be penned on the dimensions and effects of The Land Question. The appearance, in 1987, of *Land, Settlement and Politics on Eighteenth-Century Prince Edward Island* by J. M. Bumstead and the publication, in 1988, of the Abstract of the Proceedings before the Land Commissioners' Court (*The Prince Edward Island Land Commission of 1860* edited by Ian Ross Robertson) are recent examples, indicating the "tiresome" subject is still one of much interest.

It was the settlement of this controversy, achieved by the purchase of lands from absentee proprietors for tenant farmers, that was a central factor in 1873 when Prince Edward Island became the seventh province to join Confederation. Enshrined among Canadian constitutional documents as part of the official Terms of Union is recognition of the problem and its solution, with these words:

> That as the Government of Prince Edward Island holds no lands from the Crown, and consequently enjoys no revenue from that source for the construction and maintenance of local works, *the Dominion Government shall pay* by half-yearly instalments, in advance, to the Government of Prince Edward Island, forty-five thousand dollars per annum, less interest at five per cent, per annum, upon *any sum not exceeding eight hundred thousand dollars which the Dominion Government may advance to the Prince Edward Island Government for the purchase of lands now held by large proprietors;* . . . . . [Emphasis added.]

While The Land Question may have been resolved a century ago, it has cast a long shadow over the manner in which Islanders have traditionally guarded their relationship with their turf. Again and again in the course of our public hearings, the Commissioners were reminded of these historical antecedents. And these reminders were not always cast in the stone of The Land Question in its skeletal elements, for we received presentations from individuals who noted they were 6th, 7th, 8th and even 9th generation Islanders who, on occasion, could recount family-held tales that personalized situations involved in disputing and resolving The Land Question. Writing for the *Globe and Mail* on April 3, 1990, Robert Sheppard endeavoured to capture something of this mood under the heading: "Change 'Language' to 'Land' and PEI is Quebec Writ Small".

It was from this beginning that there can be traced a long stream of both legislation and literature dealing with both land use and land ownership. While it is the law that is of more direct relevance to us, the literary thread that linked history and geography demonstrates that land use and land ownership were long intertwined in the popular culture. John Stewart's publication, *An Account of Prince Edward Island,* published in 1806, set the tone with its verbose sub-title: "Containing its Geography, a description of its different Divisions, Soil, Climate, Seasons, Natural Productions, Cultivation, Discovery, Conquest, Progress and Present State of the Settlement, Government, Constitution, Laws and Religion." A century and a half later, Andrew Clark followed the same meshing in his *Three Centuries and the Island: An Historical Geography of Settlement and Agriculture in Prince Edward Island.*

While these seeds in the study of land use were being sown in the scholarly domain, government was grappling with the first planks in a legislative framework that moulded rules concerning land ownership in the Province. An "Act to Enable Aliens to Hold Real Estate", passed in 1859, removed the common law disability that prohibited aliens from holding any land and, for the first time, allowed aliens (or persons holding for them) to own land in the colony. Aimed at attracting American capital into the Island fishery, but with The Land Question still unresolved, this legislation placed a limit of 200 acres on any such holdings. The 1859 restriction was modified in 1939 when aliens were allowed to hold more than 200 acres with the consent of the Lieutenant-Governor-in-Council. There is little evidence to suggest that this provision was "enforced", even though failure to obtain the requisite consent could effectively cloud title to property purported to be held by any alien whose holdings exceeded the maximum.

Even before World War II ended, post-war planning began and with it came an ever-growing interest in land use studies. Perhaps the earliest of these may have been the 1944 work of J. E. Lattimer who prepared the "Economic Survey of P.E.I. with Particular Emphasis on Agricultural Needs" for the P.E.I. Reconstruction Department. However, it was the Government of Canada which developed a keen interest in land use over the next three decades.

In Ottawa, the Geographical Branch of the federal Department of Mines and Surveys became particularly concerned about land use surveys after 1949 when the International Geographical Union, of which Canada was a member, appointed a commission to study the possibility of a world land-use survey. The following year a "Soil Survey of Prince Edward Island" was prepared by G. B. Whiteside for the Experimental Farms Service in Charlottetown.

For the next two decades there was a small but growing flow of studies and reports. The Experimental Farm Service in the Canadian Department of Agriculture published *Progress Report, 1948-52* and *Progress Report 1953-57* in 1954 and 1959 respectively, along with "Experimental Farm Highlights in Atlantic Provinces" in 1959. Various studies on specialized areas, such as sheep production, potatoes, grass and so forth, emanated from assorted agricultural sources, while W. J. Dalton looked at "The Tourist Industry and the Farm Economy" for the Atlantic Provinces Economic Council in 1957. The federal Department of Northern Affairs and National Resources released "A Forest Classification for Canada" through its Forest Research Branch in 1958. Meanwhile, the Department of Mines and Technical Surveys had been active in geographical and geological surveys and its focus shifted to Prince Edward Island as the new decade began. C. N. Forward prepared "Shoreline Changes in Egmont Bay and Bedeque Bay" for the Geographic Branch; it was the first in its series of *Geographical Papers* that considered Prince Edward Island. The same year (1960) saw the release of its "Surfacial Geology of Mount Stewart" as part of the Preliminary Series put together for the Geological Survey of Canada by the Mines &

Technical Surveys portfolio. Studies by D. Dyck on "Land Use and Farm Income in P.E.I." (1961) and "Farmers' Views on Rural Life in P.E.I." (1961, 1962) and another APEC study ("Population Movements in the Atlantic Provinces" by K. Levitt, 1960) indicated the growing trends towards more data collection and the integration of socio-economic variables with more hard core scientific information.

These and other works provided an important foundation for C. W. Raymond, J. B. McClellan and J. A. Rayburn in the preparation of *Geographical Memoir 9: Land Utilization in Prince Edward Island* for the Geographical Branch of the Department of Mines and Technical Surveys. Although written a quarter of a century ago, *Geographical Memoir 9* is useful from a number of perspectives.

The report marked a recognition that land use was a more encompassing matter than either a science exercise, based on geological formations and soil types, or a classification exercise derived from an inventory of existing utilization patterns and an aggregation of the acreages found to be growing trees, potatoes or grain. This realization was spelled out by the Director of the Geographical Branch in his Preface to *Land Utilization in Prince Edward Island* with these words:

> ...the Geographical Branch had embarked upon a national program to build up a geographical series of land-use maps similar to the series of geological, soils, topographical and forestry maps already in existence.
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> But such maps alone are insufficient to explain the reasons for, and the inter-relationships of, the various land-use categories. For these purposes, explanatory memoirs are needed. In addition, such monographs can incorporate the wealth of material and observations collected during field work that cannot find expression on the map. Together, the maps and reports can serve as an important foundation for the drawing of conclusions aimed toward a more rational utilization of the land.

As a result of this more mature approach to the study of land use, *Geographical Memoir 9* sought, for example, to explain factors leading to land abandonment, beyond the physical limitations of slope and soil, by addressing cultural and economic variables, such as the availability of transportation and communications.

More importantly for our purposes, the contents of *Geographical Memoir 9* provides a detailed snapshot of Prince Edward Island as it was around 1963, enabling us to have a greater appreciation of what can be accomplished - for better or for worse - in the space of but one generation. Today it seems difficult to believe that, less than three decades ago, electricity had yet to reach 15% of Island residents or that, by the start of 1961, there were only 732 miles of paved roads in the Province with nearly one-third of these (214 miles) paved in the preceding 3 years. But this information serves to illustrate the changes that have been wrought. Such factors have, in turn, had profound implications for land use. (And, because the subsequent *Report of the Royal Commission on Land Ownership and Land Use*, prepared a decade later for the Province of Prince Edward Island, did not provide the same detailed pictures of land utilization as did *Geographical Memoir 9*, it is useful to refer to the 1963 report as a basis for noting points of contrast and of similarity in tracing some aspects of land usage patterns.)

Another federal milestone in the work of the Department of Energy, Mines and Resources came with the publication of Geographic Paper No. 45 "Land Adjustment Problems in Prince Edward Island: A Cartographic Presentation", issued in 1970 and prepared by Andree Beaulieu. That document identified land tenure as an important component in any consideration of land use and/or land ownership.

The background to Geographical Paper No. 45 is worth mentioning, for this study was born out of a significant phase in the Province's evolution - the 15-year Comprehensive Development Plan. As explained by the author, at p. 1:

> *The Development Plan was prepared by the Economic Improvement Corporation, a provincial Crown corporation created for the purpose in 1967.* The E.I.C. requested the Economic Geography Division, Department of Energy, Mines and Resources, to assist the plan formulation by preparing an up-to-date property map of all rural holdings 5 acres or more in size and by carrying out a survey involving interviews with the landholders. It was anticipated that agricultural improvements would involve land adjustment and the creation of larger, more economic farm units. It was therefore essential to know in detail the existing pattern of landholdings. It was also essential to have some knowledge of the characteristics of the landholders and their desires and attitudes regarding farming. Without such knowledge, relevant programs of assistance to agriculture could not be devised.
>
> The socio-economic research, begun by the Economic Geography Division in April 1967 and completed in November 1969, was funded by the Canada Land Inventory, Department of Forestry and Rural Development. An essential complement to this information was existing C.L.I. data on physical land capability.
>
> ....
>
> This dependence on renewable resources such as agriculture and fishing is an essential consideration in attempts to develop the provincial economy, to improve employment opportunities, and to raise income levels and the standard of living. *In March 1969 the Federal and Provincial governments signed a 15-year agreement for a Development Plan for Prince Edward Island, a major objective of this plan being the full development of these renewable resources.* Other goals include the restructuring of the provincial education system and major improvements in housing, health and welfare services. Although this paper is primarily concerned with problems in the agricultural sector, it is important to remember that the plan is intended to be comprehensive: it can readily be shown that agricultural improvements are unlikely to be achieved unless similar progress is made in developing other aspects of the Island's economy and society. [Emphasis added.]

One aspect of this study, involving an Island-wide survey of some 8,500 landowners holding units of 5 acres or more, illustrated the importance of socio-economic data in land use planning. Less than a decade earlier, *Geographic Memoir 9: Land Utilitzation in Prince Edward Island* showed how such information could be used to explain changes that occurred in the past. Now, much more detailed and specific information of this type was being collected as data that would be used to plan for the future.

[Parenthetically, it is noted that the author found "a number of persons could not be interviewed, mainly because they did not reside in the province" - a small but interesting illustration of a point on which we shall elaborate further in our discussion on non-residents.]

A second aspect of this study relied upon property mapping showing land holdings. The entire Province had been subjected to its first major mapping exercise when Captain Samuel Holland completed his survey in 1766. He divided the Island into three counties, 14 districts or parishes, and 67 lots or townships of approximately 20,000 acres in each area. With perhaps the exception of the districts or parishes, these basic divisions have remained in use to the present time. More than a century after Holland's survey, the 1880 Meacham Atlas provided a detailed series of maps that showed existing property boundaries and property owners throughout the Province. Similar maps of land ownership, revised to 1920, appeared in the Cummins Atlas. After 1920, no further province-wide review of property boundaries or landholdings was undertaken until a property mapping project was initiated in 1967 and completed 2 1/2 years later. This exercise involved contact in person, as much as possible, with the owners of 12,000 individual landholdings, as well as the recording of boundaries and ownership of landholdings on aerial photographs. While this exercise did not examine either title to land or the accuracy of boundaries, it did provide many of the essential ingredients for a more sophisticated system of land registration and the eventual production of orthophoto maps once ownership of all holdings of less than 5 acres in size was completed. Among other things, this work was also an important step in the development of the property assessment program that culminated in the property tax regime we have in place today. But, in addition, it was a stepping-stone for two other important aspects of the land situation identified by Beaulieu in Geographical Paper No. 45: land tenure and land fragmentation.

Land tenure is a sub-issue of land ownership; land tenure refers to all types of control between people and land. One of the land tenure patterns identified in the 1970 study was established from a sample survey, choosing Lot 60. The cartographic presentation explained the land tenure problem identified from the study in these terms:

> If a landowner dies intestate, his land is likely to pass, undivided, into the ownership of several heirs. The absence of individual ownership often leads to the land remaining idle. A further and equally important problem to a potential purchaser is the legal complexity of securing clear title to an undivided estate. Lot 60 indicates that such undivided estates are a frequent occurrence.

The accompanying map showed more than a dozen parcels of land found to be undivided estates. [This problem was identified as a continuing one in some of the presentations made to us.]

A second, more complex land issue, identified by Beaulieu, was that of land fragmentation, which greatly affects the patterns of farming operations. "The desire of many farmers on P.E.I. to expand the scale of their operations has led to the development of a very intricate pattern of additional holdings and rental agreements....[A]t present an individual farmer may need to travel between a large number of small holdings, widely separated from each other." To illustrate this, detailed maps of Lots 11, 12, 63 and 64 were prepared. Superimposed on these diagrams were the lines connecting each individual farm residence with the various parcels owned or used by that farmer in the area. The results clearly indicated that efficient farming operations were handicapped by the patchwork of land parcels being used by individual operators.

While an array of land ownership and land use issues were under consideration in relation to the Comprehensive Development Plan, new legislation was passed and new agencies were created to effect change. The first in what was to become a series of enactments bearing the title of *Planning Act* was enacted by the provincial Legislative Assembly in 1968, while the Land Development Corporation was created in 1969. The establishment of a Land Use Service Centre in the provincial administration during this era signified, as well, the attention being directed upon land issues; its eventual demise, a few years later, seems to have equally coincided with a declining public sector interest in some aspects of land matters. In the interim, the issue of land ownership in the Province came to the forefront once more.

In June of 1970 the Prince Edward Island Legislative Assembly appointed a Special Committee on Land Acquisition. Known formally as the Special Committee of Inquiry on Land Acquisition and Land Transfer to Non-resident Corporations and Private Individuals, the Committee consisted of five Members of the Legislative Assembly "who shall inquire into and determine the extent and statistics of land acquisition and land transfer of real estate in the Province of Prince Edward Island by nonresidents, corporations and private individuals."

The Committee's report was presented to the Legislative Assembly on April 2, 1971. (This Report is reproduced as Appendix F, in Volume 2) Since its findings will be considered in greater detail in our consideration of non-resident ownership, at this point we shall mention only what might be considered to be its most alarming finding: "If acquisition of land by nonresidents was to hold at the present rate of approximately 22,000 acres per five years, some 204,000 acres or 14.5% would be foreign owned by the year 2000."

Equally significant, however, was the conclusion that the Committee reached:

> The increase of foreign ownership on P.E.I. is causing concern among residents. Foreign ownership can be considered good or bad depending upon how the land purchased is used. The Committee feels that the right of private owners to sell to the highest bidder should not be interfered with.

The seven recommendations outlined by the Committee to deal with this issue were not fully implemented.

One result of the Committee's findings - although not a recommendation of the Committee - was an amendment to the *Real Property Act* that restricted the purchase of land by all *non-residents* of the province to no more than 10 acres and/or 5 chains (330 feet) of shore frontage without the approval of the Lieutenant-Governor-in-Council.

This amendment, made in April of 1972, was quickly followed by the appointment of the Royal Commission on Land Use and Ownership in Prince Edward Island in August of the same year.

We understand there were three main factors that led to the concern about land ownership and, ultimately, to the appointment of the Royal Commission. The first of these was an increasing demand for recreational land. Conventional wisdom in the late 1960's and early 1970's was that, in North America, urban populations would continue to increase, real incomes would increase and leisure time would increase. As desirable recreational rural areas close to the eastern urban corridors (Quebec-Windsor, Boston-Baltimore) were bought up, pressure would extend to more remote areas, such as Prince Edward Island, with its excellent beaches and low land prices. Support for this view came from the activities of land purchasers such as M. Walker and R.B. Evans. Both had been involved in subdividing land on the B.C. Gulf Islands until new regulations there prohibited small lots. Prior to 1972, both had acquired numerous prime shorefront acreages in Prince Edward Island and were attempting to subdivide them for sale to buyers in Boston, New York, Montreal and Toronto. The attractiveness of Island land for their purposes was obvious - low prices, low taxes and minimal subdivision requirements. The government of the day was convinced that Walker and Evans were the advance guard. If no actions were taken, large portions of the coastline would be lost to local ownership and control.

A second factor that apparently led to the creation of the Royal Commission in 1972 was corporate purchases of farm and forest land. Away from the shore, during the same period, corporations were buying up both farm and forest land. Dundas Farms and related companies acquired large acreages in Kings County for a cattle operation. Campbell and Burns and MacLeans were acquiring land in Eastern Prince for vegetable and potato processing operations. Henderson Lumber purchased large tracts for its forestry operation. Many within the farming community saw this as a dangerous trend: corporations such as these were seen to have access to greater capital resources than a family farmer and consequently they could offer to pay more for land. Eventually such corporations would control the land base of the province and farmers would become tenants or paid farm workers. Not all were opposed to corporate ownership; many in Kings County saw Dundas Farms as a positive development, bringing abandoned land back into production. This trend towards corporate ownership, by companies controlled by non-producers, was a contentious issue to be considered by the Royal Commission, appointed in 1972.

A third factor that might be said to be instrumental in the establishment of the inquiry was the nature of the data base. As a result of the Comprehensive Development Plan the province was developing a data base superior to that of most other provinces. Even today, the large-scale orthophoto maps with continuously updated property boundaries are the envy of most other provinces. Without detailed maps, the property data available as the province adopted a universal land tax, and a socio-economic survey of every property owner with more than five acres of land, the ownership data that gave rise to the 1972 Royal Commission could not have been produced. In one sense the ownership issue was a product of the information system that had been developed. Concern about a twentieth-century wave of non-resident ownership emerged in Prince Edward Island, before it did elsewhere in Canada, because Prince Edward Island was the only province with the tools to analyze ownership patterns effectively.

The three-member Commission, appointed under the *Public Inquiries Act*, was given instructions

> ...to make full inquiry and to make findings and recommendations into and concerning all matters relating to the ownership and use of land in the Province of Prince Edward Island, and without restricting the generality of the above terms of reference, to inquire into and report and make recommendations on the following:
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> 1. The provision of prime shorelands and conservation areas to meet future public recreational needs.
> 2. The implications of the present and future demand for the land of this Province in the off-island real estate market.
> 3. The effects of rising land prices on family farm operations in Prince Edward Island.
> 4. Methods of assisting residents in developing their land resources for their own benefit while, at the same time, ensuring that our environmental quality as well as our heritage is protected.
> 5. Any other related matters which the Commission considers would be brought to the attention of the Lieutenant-Governor-in-Council.

The Royal Commission of 1972-3 held 13 days of hearings and received 29 written briefs at these hearings. Nine organizations and 12 private individuals presented briefs at private hearings and through the mails. An interim report was issued on January 24, 1973, and its final conclusions and 23 recommendations were made available to the Premier (who soon thereafter made it available for public release) on July 9, 1973.

While this final report identified a number of the existing trends in land use and land ownership, the Royal Commission of 1973 determined that land use and land tenure were greater priorities than land ownership. Accordingly, it recommended a minimum maintenance requirement that would eventually extend to all categories of land owners in the Province, beginning with the Land Development Corporation and followed, respectively, by all corporate landholders, non-resident aliens, non-resident Canadians and all non-occupiers of land. In addition, it recommended a province-wide land use plan, coupled with the designation of natural areas, additional beach access, and a coastal land use plan. More detailed community planning, combined with more local input in these plans, was recommended. Agricultural preservation was to be encouraged and soil erosion discouraged. Compulsory, practical agricultural courses were recommended. Woodlot management and other aspects of the forestry industry were to be assisted. New forms for providing public recreational space were to be explored and new facilities for linear recreational activities should be established. Subdivision design improvements were called for, along with the introduction of servicing regulations that included improved standards for sewage and water disposal as well as formulas for installation costs and long-term maintenance of both utilities and roads in subdivisions. Measures to curb ribbon development of housing along Island highways were urged. The Royal Commission advocated "very substantial financial assistance from the provincial government" to the City of Charlottetown. Improvements to the system for registering land and establishing corporate entities were proposed. In keeping with its basic philosophy to relegate land ownership to minor consideration, the Royal Commission favoured the removal of all restrictions on nonresident ownership once certain land use proposals were implemented, except that land holdings of all corporations would be limited to 200 acres without the consent of the Lieutenant Governor in Council.

(The complete text of the 1973 "Report of the Royal Commission on Land Ownership and Land Use" has been reproduced as Appendix G in Volume 2 with the recommendations to be found commencing at page 270.).

As can be seen in our discussion on various subjects in detail throughout this report, many of these recommendations were not implemented although kernels of the proposals were adopted, often in modified ways. Other recommendations have continued to surface, again and again, in the intervening years as the problems identified by this Royal Commission continue to be unresolved.

The Royal Commission of 1972-73 was a landmark in Island history. It focused attention on land issues to a degree that had not been seen since the landlord-tenant conflict of the nineteenth century. Its recommendations were innovative and thought-provoking. Many were in advance of the times and merit re-examination today. Nevertheless, there were several weaknesses in the report that hindered the rapid adoption or widespread, immediate acceptance of its recommendations.

In hindsight, we are of the view that the Royal Commission of the day seriously misread the mood of the public in its conclusion that "the most repetitious theme throughout the public hearings was the importance of land use as opposed to land ownership". One reason for this may have been the result of the manner in which the Commission structured its agenda. For its public hearings, the Commission issued "a series of provocative questions intended to stimulate thought and discussion of the issues", but only one of these twelve questions dealt directly with "off-Island land owners". The balance were focused on land use issues, although one or two of these had "non-resident" features.

The ends that the Commission recommended for the province to achieve were very clearly outlined. The means to accomplish them were much less clear. The commission was proposing highly sophisticated solutions in a province with a very rudimentary capacity to implement them. We understand that, at that time, only a few provincial officials had any knowledge of land use planning and regulation and there were few, if any, lawyers knowledgeable in planning law. The notion of applying for building permits before a building was built was not firmly entrenched in rural areas. What the Commission was proposing was probably unrealistic without a large increase in staff and funds. The legal basis of some of the recommendations was questionable. The Commission stressed what needed to be done, but it tended to ignore the process that would accomplish its goals.

In effect, the Commission was recommending that an individualistic land ethic - "the land is mine to use as I choose" - be replaced by an ethic emphasizing land stewardship "I am a temporary custodian of the land, and must have regard for future generations." Changing public perceptions and attitudes is never easy and Islanders had been called upon to embrace a number of alternatives to their traditional lifestyles as a result of the Comprehensive Development Plan. There was a growing antipathy among many to the Development Plan with its school consolidation, farm rationalization and other changes. For the Commission to expect that either government or the public would accept its recommendations under these circumstances was probably naive.

The Commission based its recommendations on the continuation of existing trends - strong demand for land by non-residents and corporations, rapidly increasing numbers of tourists, the availability of federal funds for land acquisition and the eventual accomplishment of the goals of the Development Plan. The Commission did not appreciate that the province was at the peak of a land boom that would end in the mid '70s, with a downturn in the economy. This is not a criticism of the Commission. Economic forecasting is not the easy exercise it was once thought to be, prior to the oil crisis of 1973. A much slower pace of economic growth from 1976 to 1985 dampened the urgency underlying the Commission's recommendations. Only with the recent upturn in the economy have land issues again come to the forefront.

In any event, the 1973 Royal Commission report touched off a storm of controversy. Attention focused on the issue of "regulations" and public opposition to more intensified regulatory measures over land use became a central issue.

After the Royal Commission submitted its report to government in July, 1973, Executive Council appointed a small committee of senior civil servants to assess the report and bring forward recommendations for its consideration. The Committee was chaired by Andrew Wells, Principal Secretary to the Premier. Commonly known as the Wells Committee, its report was submitted in January of 1974.

The Committee was generally supportive of the Commission's recommendations. It did recognize that there was more public opposition to the report than the Commission had sensed, and that many of the goals were long term, requiring strong public support before they could be implemented. The Committee viewed the Commission's report as too radical for immediate implementation; it suggested three modifications that would render the major recommendations more acceptable. These were: the formation of a Land Use Commission, the use of voluntary zoning, and the purchase of development rights.

We understand that the Committee believed that government would not be willing to implement the Commission's recommendations because of strong opposition from landowners. Consequently it conceived of a non-partisan continuing body, divorced from politics, that would be a focus for land use issues. In effect the body would command such respect in the community that its recommendations would force government to act. It would be an omnibus body, advising government after holding public meetings, establishing planning boards where necessary, establishing land use guidelines and ensuring that government departments followed them, establishing land identification programs and acting as an appeal body. The name proposed for the new "super-body" was the Land Use Commission. The Royal Commission had suggested no such body.

The Committee believed that both the coastal land use plan and the provincial plan proposed by the Royal Commission were politically unacceptable and that Executive Council would reject them. They represented too big a stick. The Committee began to search for a carrot. The idea of voluntary zoning proved to be the carrot they were looking for.

Conventional zoning limits landowners' choices for the use of their land. The Committee believed that zoning would be more palatable if landowners were somehow compensated for their loss of rights. From this came the notion of voluntary land identification. An owner would sign an agreement with government that his land would not be developed. In return, he would be exempt from land tax. The Committee proposed a land identification program, which it viewed as a step toward conventional zoning, on the premise that every acre saved from development was an acre gained by agriculture.

Enabling sections for land identification appeared in the 1974 Planning Act. The Act also made provision for involuntary identification, the ability of government to identify land as a condition of approval on non-resident purchases or on land being purchased by farmers from the Land Development Corporation.

Voluntary identification was never put into effect. Involuntary identification began in 1978 and, in the form of identification for non-development use, still exists; a request for its removal formed the basis of the recent Greenwich case.

Although voluntary identification was seen as an interim measure, the Committee sought a permanent solution to the land problem. Purchase of development rights appeared to be such a solution. At the time, several American states and counties were examining the concept. If all development rights could be purchased, then the use of those rights would become the domain of the province; obstinate owners would no longer be a problem.

Consequently the Committee recommended that the Land Development Corporation should be given the ability to purchase development rights of all resident-owned land, at a price not to exceed 50% of the assessed value of the farm in 1973. The Committee recognized that such a program would be costly, but was hopeful of finding federal funds to support it. The recommendation was never seriously considered by government. The purchase of development rights has been carried out in scattered locations in the United States. The earliest and best-known example is Suffolk County on Long Island, New York. In an American context, where the courts have interpreted the Constitution to restrict zoning powers, the idea may have some merit. Experience has shown it to be a very costly undertaking, useful mainly on the outskirts of major metropolitan areas, where the land rendered development-free may have value as an urban scenic amenity as well as its farmland value.

In Canada, the concept has received short shrift. Development, under the British system, is regarded as a privilege, to be granted by the Crown. The welfare of the state is paramount. Zoning and regulation, in one form or another, has been much more widely used in this country, most notably in British Columbia where a provincial agricultural reserve was established in the early 1970's. Property ownership rights are not embedded in the Canadian constitution, even though their inclusion has been recommended by the federal and several provincial governments (and strongly opposed by successive governments of P.E.I.).

In summary, the main contribution of the Committee on Land Use and Development Issues was its recommendation to establish a Land Use Commission, with a broad mandate and sweeping powers. The legacy of the earlier Royal Commission is not so easily identified, for the extent to which its recommendations may be said to have been implemented depends upon a somewhat subjective assessment of what has transpired in the interim. However, the point of view expressed by the former Executive Director of the Land Use Commission, John McClellan, in "Rules of the Game: Land Use and Land Ownership on Prince Edward Island" provides a score card of reasonable accuracy. In the text of an address initially made in a Public Forum Series and subsequently published in a monograph, McClellan, at page 1, maintained:

> The 1972 Royal Commission made 23 recommendations. By my count, five were adopted by government, three were partially adopted, and 15 remain in limbo. Its major recommendations were not adopted. They included a generalized provincial land use plan, a detailed coastal land use plan, and minimum maintenance requirements for non-resident and corporate lands.

Chapter 2

CURRENT SITUATION

In any investigation of land use, land ownership and the landscape, it is natural to pose an initial basic question: what is the present policy, direction or commitment with respect to the issues raised by these topics?

We asked that question in varying forms and ways throughout the tenure of our deliberations and the answers that came forward have led us to a number of negative conclusions.

At the outset, we emphasize that our commentary is not confined to the present administration; it is a theme that has underlined successive governments for a number of years.

We would be overstating the case to say there is no policy, no direction and no commitment. Yet, such exaggeration is not as inaccurate as might, on first reflection, seem.

Yes, there is a massive accumulation of regulatory provisions with the legislative enactments that are a prerequisite to such provisions. Yes, there are official plans in place in a number of communities. Yes, there has been a massive "industry" created in issues that evolve around land use, land ownership and the landscape with requirements to be fulfilled, appeal processes, media attention, numerous studies and policy papers.

We submit that there is, in reality, *no* consistent, coherent set of land policies in place in the province, no vision for the future at the provincial level and no sense of direction in land issues on the part of the government. The structure now in place has been subject to so much inconsistency, to such lack of commitment, to an unwillingness to grapple with tough issues, to "knee jerk" and impulsive reactions to deal with crises and individual circumstances that we can find nothing that would clearly define policy in regard to land.

We have assumed that in appointing a Royal Commission, government is prepared to invest a commitment to land issues, that it is prepared to generate the debate and contention which are inherent components of resolving these issues.

We substantiate our harsh criticisms with the following examples.

With respect to land ownership, what is government policy in terms of non-resident land ownership? On the one hand, there is legislation that *prohibits* non-residents from owning land in the province in excess of five acres or one hundred and sixty-five feet of shore frontage. Is that the rule, the general policy? In reality it is not. The legislation provides an exemption, allowing non-residents to exceed these limits by obtaining the consent of the Lieutenant-Governor-in-Council to do so. From the outset, however, the approvals, made by the Lieutenant-Governorin-Council, have shown such a marked degree of reluctance to deny any non-resident permission to exceed the limit that the application of the legal exception, in fact, amounts to a virtual open-door policy to non-resident land ownership.

The province has legislation that limits the amount of land that can be held by a landowner and requirements that call for the divestment of holdings by those in excess of these limits. Yet, when the thrust of this legislation was markedly altered by judicial interpretation, no attempt was made to alter the effects of the court's ruling by amending the legislation. No effective mechanism was ever put in place to monitor or enforce the legislation. While *bona fide* farmers, anxious to be law-abiding citizens, complied with the law and sold off acreage to be in conformity with the legislation, the province did nothing to ensure that any landholders who intended, if at all possible, to thwart the legislation would be immune from difficulties. So, we ask, what is government policy with respect to land ownership?

Although many farmers have been steadfast in maintaining that "producers should produce and processors should process" - a refrain repeated so often it began to take on the appearance of public policy - the first clear enunciation of this as "government policy" came in the spring of 1990. This, we might add, came only in response to what might be termed a "crisis" scenario and we are left to question, given the past record on land policies, if this turn of events actually spelled out one aspect of future land policy or if it was but a statement that, for that moment, seemed apt for a particular set of circumstances.

The situation with respect to land use is infinitely more tangled.

The Province of Prince Edward Island - one of only two provinces in Canada where agriculture remains the leading industry in the economy - has no land use policies reflective of that fact.

Regulations made pursuant to the *Planning Act* contain a "Statement of General Planning Principles and Policies", some of which recognize the importance of agricultural land. But there the matter ends.

Government allows cottage and residential subdivisions, as well as any and all other land uses, to soak up land, whether it is Class II or Class III land or land less suitable for agriculture. At the same time, government itself is prepared to locate public buildings on good agricultural land. Not only do these lack of policies in respect to agricultural land preservation diminish steadily the supply of a limited natural resource, but they provide the raw ingredients for conflicts between different land uses.

There is no discernable policy with respect to land speculation. Again and again we have heard that land speculation is an "evil" that must be stopped. Successive Island governments, however, have done little to do so. Land speculation, that could be halted to some extent through the timely denial of large purchases to or from non-residents or those involving parties known to market land actively at inflated prices, has been allowed to thrive. A number of government programs created for other purposes have become vehicles to assist in land speculation at public expense. Chief among these has been long-standing practices by the Land Development Corporation (now known as the Agricultural Development Corporation).

No policies are in place to consolidate land holdings in order to create more viable farming units and/or to reduce production costs that increase from the use of a land base scattered among numerous, geographically-divergent parcels. Government agencies, such as the Prince Edward Island Lending Authority, have inherently encouraged land fragmentation and the diversion of land from agriculture by advertising properties for sale in terms of subdivision potential or shore frontage.

Numerous public and private-sector bodies have been formed, in specific geographical areas and on a province-wide basis, each with an agenda devoted to economic development in general or tourism in particular, but all of these efforts operate without the benefit of any comprehensive provincial land use planning agenda.

What is the province's land use policy in respect to tourism and recreation? Is tourism to be "Island-wide" or confined to selected areas? Are tourism-related land uses to be encouraged where landowners are prepared only to invest in a peak-season operation? If the province is committed to the development of tourism during the "shoulder" seasons, then why are government-owned facilities open and operated only in the peak season? Why is government literature circulated in a manner that portrays Prince Edward Island only as a summer landscape? Why are tourist operators who open their doors only for a few weeks given the same type of support, whether through free advertisements or through government lending policies, as tourism businesses who are prepared to operate year-round?

What are government land use policies in relation to land settlement patterns? We submit there are none - and that this vacuum has had and will continue to have extensive repercussions in terms of the costs to taxpayers in the provision of public services.

Present regulations give members of the public considerable latitude in building homes on a virtual "where you please" basis in much of the province, hindered only by virtue of municipal, or sometimes, especially in recent times, environmental concerns. What is the cost to the public purse of this freedom?

Failure to plan has been writ large in terms of the issues now facing government. The unfettered growth of the Southport/Bunbury area and beyond, for example, has produced growing traffic difficulties on both sides of the Hillsborough River. Unfettered growth in many communities without proper planning has now produced demands for sewer and water systems that must be met if residents in those communities are to continue to enjoy the standards of health and lifestyle to which they have grown accustomed - and massive public assistance will be expected to meet these needs. Unplanned and unfettered growth has led to a school bus transportation network that, in at least one of the regional administrative units (Unit #3), now rivals that of any major city.

What is government land use policy with respect to roads? Should taxpayers be expected to shoulder the burden of expending, for example, $200,000, or more, for a kilometre of paving so that one or even several families, who choose to settle on an unpaved road because land prices in that locale were attractively low, can now enjoy better access to main highways? Should residents be able to obtain permits for summer cottages and then renovate these structures for permanent usage? If so, what is the cost, on a per household or a per person basis of providing snow removal or school busing for such individual freedom of choice?

Government has reduced much of land use planning to an exercise in measurements. There is the "10-acre rule", the "minimum lot size" and other mathematical formulae. But these rules do nothing in terms of providing a pleasant milieu for the generations to come.

That initial, important first impression of the Island is the one visitors form when they arrive and our chief point of entry is Borden. Whether our principal link to the Canadian mainland is fixed or ferried, will that entrance continue to be one conveying an impression of a rural community amidst pastoral seascapes? Or will that landscape in and around the Borden area give way to a gauntlet of commercial stops, designed to meet the requirements of mammoth trucks and industrial concerns, all anxious to be immediately adjacent to the most popular point of exit? Entrance or exit? Which will prevail? At the turn of the century, will the Trans Canada Highway around Albany be accorded the dubious distinctions now reserved for University Avenue in Charlottetown? Or will it be a showpiece for rural landscape?

Will the Islanders of the next century be able to see the Gulf of St. Lawrence with a vista of grain fields and potato blossoms? Or, will the view be a motley collection of plywood boxes, punctuated with utility poles, satellite dishes and other assorted antennae?

Will the drive from Tignish to Souris be a continuous strip of three-bedroom bungalows, interspersed with fast-food outlets and sundry shops catering to the needs of the automobile? Or will there be places where Islanders can feel they have arrived in the countryside and see the land is at work in harmony with nature?

Not only have successive governments failed to provide policies that would enable answers to these questions but any attempt to do so has been marked by so many flip flops and exceptions that a confused public has lost confidence in most existing regulatory procedures.

To single out a particular example to illustrate our point could be a dangerous practice at this juncture, for whatever choice we made would be misconstrued as a worst case scenario. Nonetheless, let us point a finger - emphasizing that, in so doing, we are not casting particular blame on the section of government on which we now focus the spotlight of our criticism. The example is chosen because the *raison d'etre* for the rules are self-evident and widely accepted and the transgressions are so obvious. On this criteria, we find that highway access is as good a choice as any to make our point.

The need to have limited access to major highways, designed to carry long-distance, high-speed traffic from one point to another, is readily apparent. Highway safety is an acceptable goal with widespread public consensus. Yet, repeatedly, exceptions that deviate from these rules are made, each one adding to the cumulative erosion of the desired objectives.

The typical excuse for government inaction has been lack of public acceptance. But the public is well aware of the need for rules by which society can live and where they see the need for these rules, they are accepting of them. The need for safety is obvious - and rules that enhance highway safety are no exception. The problem is not one of public acceptance. It is one of individual acceptance and political commitment. Individuals feel their case should be an exception. One exception cannot hurt. They approach politicians in this frame of mind - and win support.

It has been suggested to us at our public hearings that if our elected officials devoted as much time and effort to considering good laws and policies for the province as a whole as they do to conceiving ways to bend the rules - rules which they, themselves, have made - then the province and its residents would be infinitely richer.

While this was a theme we heard again and again, phrased in both general terms and in particularized examples during our public hearings, this criticism of government organization in the province is not a new one. The "Report of the Prince Edward Island Program and Expenditure Review Commission", a document that outlines the findings and recommendations of a four-member commission named to review provincial expenditures, policies and program since 1987, made a similar charge. Expressed, perhaps, more diplomatically than we have chosen to voice our concerns, the Report, at pp. 9 - 10, had this to say:

> Because of its size, the Prince Edward Island government could, rather quickly, make fundamental changes in the way it is organized.
>
> Also because of its size, the size of the area it governs and the number of its citizens, the individual pressures on elected government officials and individual government employees is acute. It is, therefore, very difficult for elected officials and government employees to give priority to the long term interests of the province as a whole while having to deal primarily with the concerns and needs of individuals and interest groups. The number and variety of government programs is a clear indication that government has not taken enough care to avoid this result. Citizens have come to depend on government for too many things. Examples exist in almost all departments and agencies of programs that could be provided by the citizens themselves, and it is obvious that if expenditures are to be reduced, *government will have to stand back and look at what it is doing and apply more attention to the over-all needs of its citizens rather than concentrating its efforts and its employees' efforts on individualistic needs.*
>
> *There is no clear evidence to indicate that government has defined the basic priorities and the level of service that it considers to be an acceptable and achievable standard for its citizens.* For example:
>
> 1. What is an acceptable and affordable highway network for this island and what action and funding is required to maintain and develop it?
> 2. What is an acceptable level of governmental expenditures for justice and law enforcement for the province?
> 3. What is an acceptable level of expenditure for conducting the affairs of government and what tax burden will be required for it?

4. What is an acceptable level of expenditure in providing the basic educational needs of the citizens of this province?
5. What is an acceptable level of expenditure for health care for the citizens of this province?
6. What fields of activity should government engage in and what fields are more appropriate for the private sector? [Emphasis added.]

After posing these questions, the Program and Expenditure Review Commission concluded that these long-term policy issues must be answered before departmental programs can be effectively evaluated.

This commentary was aimed at government expenditures but the message, we submit, is equally applicable to issues associated with land, whether these are being considered purely from an economic standpoint or from the broader (and more realistic) stance of socio-economic, environmental, emotional and aesthetic dimensions.

At the outset, there is a choice to be made. The choice is not between "no" land use planning and some form of land use planning, for "no" land use planning is, in fact, a form of land use planning. No planning is widely recognized as the worst possible type of land use planning, usually producing the most undesirable results in the long term, but it is a form of land use planning. The choice to be made by the government is twofold: selecting the form of land use planning it is prepared to adopt and, secondly but equally important, developing and maintaining a commitment to that choice.

Repeatedly, in the conduct of our inquiry, we heard a consistent message. Islanders who had appeared before the 1973 Royal Commission told us they had been opposed to what its Report proposed to do but, having seen the results of their opposition, as problems mounted, they regretted their negativism. In hindsight, they regretted not having supported a more positive and managed approach to land issues when the choice first was offered to them. Islanders told us they do not like regulations but, even less, do they like the consequences of no regulations - or regulations that are unenforced and/or unevenly applied. These messages often came from unexpected quarters, from sources that might be expected to embrace fewer controls on development. But that was not the tenor of many presentations to us.

From the West Prince Chamber of Commerce, in a brief presented on behalf of its 114 members, we were told that:

1. *Government should develop a desirable land use policy for P.E.I.* in conjunction with local and regional representatives. We strongly feel that much of the authority should be delegated to the local and regional level.
2. *Government should set the example and follow this policy in respect to all development that it owns or contributes to financially,*
3. *Some zoning restrictions are going to be a necessary, albeit controversial, part of this land use plan. We accept the necessity of these measures.*

> 4. *A more extensive purchase of prime beach access areas and attractive natural areas by the Provincial Government should be undertaken.* The LDC should be given first option to acquire property which is desirable to have in public ownership.
>
> 5. The Federal Government should be approached to develop a special program to assist the province in acquiring more Crown land in restrictive areas. We question whether an expansion of the National Park is the right approach for P.E.I. which has relatively small "widerness" areas in a densely-populated rural province. We feel that other alternatives for Federal participation should be explored.
>
> 6. *We want the access to main highways, especially to Highway 2, to be strictly limited.* West Prince residents suffer great inconvenience in travelling to the main centers of P.E.I. and to the ferry terminal due to the increased number of speed zones, stop lights etc. [Emphasis added.]

The Prince Edward Island Real Estate Association provided this perception of land issues:

> In Prince Edward Island, government's record with respect to the regulation of land has not been outstanding. *There is a history of indecision, of crisis intervention, and of inadequate public consultation. The scheme for regulating property and for resolving land use conflicts is increasingly perceived by many people to be arbitrary.* In our view, at least two factors are responsible for this: (1) an *absence of provincial policy on land ownership and land use;* and (2) an *absence of detailed standards, rules, or regulations to guide administrative decision-making.* [Emphasis added.]

In its presentation, the Prince Edward Island Real Estate Association concluded with its call for reform in these words:

> The vast majority of property owners accept the need for regulation of land in the public interest. What they do not accept is the arbitrary nature of the current scheme. *The inconsistency and uncertainty which pervades land use planning and decision-making in this province has left property owners and developers confused, even angry.*
>
> It is not our intention to make specific recommendations for addressing this situation. Instead we would urge you to consider the recommendations made by your predecessor Commission, the majority of which have not been adopted.
>
> In our view, *the development of a province-wide land use plan,* as recommended by the 1973 Royal Commission, *would most effectively address the concerns identified in this brief.* A provincial land use plan would serve to make the planning process less discretionary and more democratic. It should include at least three elements:
>
> (1) Clear provincial land use and ownership policies, developed in consultation with the public;
>
> (2) A province-wide zoning map to govern those areas of the province which do not have official plans. In establishing land use zones, priority should be given to the coastal zone, in view of the increasing pressure on shorefront lands;

> (3) Accompanying regulations - well defined and equitably enforced - that specify standards for use and development appropriate to the identified zones. These standards should be formulated in consultation with communities and/or local planning areas.
>
> Adequate enabling legislation is in place to implement these elements: the *Lands Protection Act* and the *Planning Act*, particularly Part II thereof, give the provincial government sufficient power to regulate land use and land ownership. The challenge, we submit, lies in using that power responsibly and wisely.

In a brief submitted to us by Oakland Ventures Incorporated and Darrach Real Estate Ltd., we were urged to support enhanced standards for development in a number of ways. We were told that "developers have a responsibility to the land they are developing and to the people they serve and should be held responsible. This is why more standards are required, . . . and enforcement must go along with the standards", the brief concluded.

A set of rules with clear and consistent applicability was high on the list of reforms urged by many groups and individuals.

We are not suggesting that our proposals will meet with sweeping consensus. Such is the nature of any exercise in land control - even if the measure is one of "no control" - that support or opposition is defined, first and foremost, by vested interests. As the old saying aptly phrases the dilemma, "it all depends on whose ox is being gored".

If the Government of Prince Edward Island wants to back away from controversy, it can continue on the present path. This will not avoid land controversies. It will ensure the worst possible results in the long term, postponing the day of reckoning when issues must be resolved. At such a future date, the optimum solutions will have vanished. Many have already been diluted.

But if the Government of Prince Edward Island chooses to remain on the faint-hearted route, we suggest it is an extravagant waste of time, money and energy to continue with elaborate window dressing. Let the free market prevail! Let the residents of the world buy and build what and where they wish in the Province!

We sense there is a perception on the part of both government itself and the public-at-large that our Report will provide a panacea for all of the difficult land problems that have come to the forefront in recent times and/or a blueprint for the future. There are, however, no magical answers to many of these questions. There are ways and means of mitigating trends, of preventing future catastrophes, of controlling and managing land resources. These answers involve an array of options - and how one option will work depends, frequently, on the selection or rejection of other components, for land issues fit together like pieces of an interlocking puzzle.

The "answers" we have opted to give by way of recommendations, however, are not workable unless they are understood and accepted by some degree of public consensus and support. They need to be discussed and debated. It may well be that, from that process of public input, the province would be best served by selecting options that are not contained in our recommendations or that represent modifications to our recommendations. Such a dialogue, however, would be little more than an exercise in futility and waste unless government is prepared to make a commitment to a planned and managed approach to land issues.

Accordingly, we make, as our initial recommendations,

- **THAT government develop and implement consistent and cohesive land policies that are fairly and evenly applied and uniformly enforced.**
- **THAT one of the cornerstones to these land policies is the adoption of a comprehensive set of land use plans for the entire province.**

Chapter 3

AGRICULTURAL PRESERVATION

Our mandate includes terms of reference calling for us to inquire into and report on "the major changes and the impact those changes have had in land ownership, land use and the quality of the landscape since the inquiry of 1973 into land ownership and land use", as well as "all existing legislation pertaining to land use, particularly that relating to ownership by non-residents". Our initial recommendations, calling for consistent and cohesive land policies, together with a comprehensive set of land use plans for the entire province, culminate from the results of our inquiry. To understand how and why we have reached these conclusions, it is necessary to consider a variety of issues. It is appropriate to begin this examination with some of the key concerns directly affecting the province's more important economic sector, agriculture.

The 1973 Royal Commission on Land Ownership and Land Use examined the agricultural "resource base" by considering, at page 21, the facts in these terms:

> Prince Edward Island contains some 1,400,000 acres. Measurement of recent Canada Land Inventory information on the agricultural capability of Island soils indicates that almost exactly one million acres (1,025,068 acres)[*] are rated as Class 2 and Class 3[**] and are truly well suited to agricultural use. But of this million, only 576,947 acres are actually cleared for farming. Even with the addition of a further 8,471 acres of cleared Class 4 soils which are suited only for pasture, or in some instances, tobacco, the total acreage of good quality *cleared* farmland on Prince Edward Island does not exceed 585,000 acres.

P.E.I. AGRICULTURAL LAND CAPABILITY

BASED ON MEASUREMENT OF CANADA LAND INVENTORY INFORMATION

	CLEARED	WOODED	TOTAL
Class 2	407,654	265,877	673,531
Class 3	169,293	182,244	351,537
Class 4	8,471	108,929	117,400
TOTAL	585,418	557,050	1,142,468
Classes 5, 6 & 7 Cleared and Wooded			258,842
TOTAL ISLAND ACREAGE			1,401,310

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[*] The new soil survey, now well advanced across the Island, may well adjust these acreages up or down.

[**] Class 1 land is confined in Eastern Canada to a small area in Southern Ontario - there is none in the Atlantic provinces.

The Commission also noted the changes in the patterns of land use, changes that were decreasing the number of farms while increasing the average size of farm units with a net effect of decreasing the amount of land used in agricultural production. These trends were explained in the passage found at pp. 22-27, which stated:

> Not all of this high quality cleared land is still actively farmed. Nor is a substantial further acreage which though once cleared, has long since returned to trees. Despite its tranquil image, the Island landscape has been in a constant state of change ever since settlement began in the late 1750's, and particularly since 1930 with the gradual contraction in improved agricultural acreage.
>
> In 1891, 87 per cent of the total land area was taken up in farms. The average holding was only 80 acres of which 30 acres remained in forest.
>
> After 1891, rural settlement declined coincident with the opening of the Canadian West and with industrial expansion in Central Canada and New England. However, despite this and although abandonment had begun as early as 1891 in the poorer lands at the extremities of the Island, the amount of improved acreage continued to grow in the central part until 1931 and in a few census subdivisions until 1941. Hence, the overall contraction in improved acreage was negligible between 1911 and 1931, despite a continuing decline in rural population totals. The furfarming industry in the 1920's, the beginning of potato specialization, and the return to the land associated with the economic depression after 1929 all served to maintain improved acreage at between 765,000 and 770,000 acres during this period.
>
> Only since the late 1930's has the major contraction in improved farmland taken place. Out of a total reduction of 275,009 acres between 1911 and 1971, a third went out of production between 1941 and 1951, the decade during and following World War II. A further 151,361 acres has disappeared from the census improved farmland total since 1956.
>
> The widespread introduction of tractor power that began on Island farms during the 1940's led inevitably to an increase in the size of the average farm unit, together with the abandonment of fields not suited to mechanical cultivation. Farm mechanization along with improved farm management, permitted the production increases necessary to sustain farm incomes, but it also placed the small farms and less efficient farmers in an increasingly marginal position. During the same period enlistment in the armed services, war industries and the post-war industrial expansion in Central Canada provided an abundance of employment alternatives that had not been available during the 1930's. More recently, the inauguration of universal old-age pensions has encouraged elderly people to cease farming and the inception of unemployment insurance benefits for fishermen during off-season has led to less emphasis on farming in the traditional fishing-farming economy of coastal areas. Expansion of employment opportunities in the service sector has accelerated the growth of Summerside and Charlottetown and encouraged the movement of rural residents to the towns. For many one-time farmers this occupational shift has taken the form of a gradual transition from full-time farmer, to part-time farmer, to non-farmer.
>
> The result of these various trends has been an enlargement of individual farm size from only 80 acres in 1891 to 170 acres in 1971, but a reduction in total improved farm acreage from 770,000 acres to only 494,131 acres during the same period.

> [The diagram in the report]. . .clearly reflects a contraction of commercial agriculture to the larger blocks of Class 2 and 3 soils best suited to crop production. In 1971, the Island farm community consisted of only 4,543 census farms, which together accounted for only about half (774,630 acres) of the Island's total 1,400,000 acres . . . .
>
> Despite enormous social cost involved in the abandonment of marginal agricultural lands, there can be little doubt that the concentration of the industry on the most productive soils is in the long-term interests of Island agriculture. At the same time it has led to abandonment of a significant acreage of good land along with the bad. It has left former clearings to regenerate in genetically poor trees of little value to forestry. It has left approximately 100,000 acres of cleared Class 2 and Class 3 land in the hands of either non-residents, or resident landholders dependent on non-farm income sources. It has also weakened the social fibre of many of the Island's rural agricultural communities.

In addressing this issue, the 1973 Royal Commission called for planning guidelines in agriculture that would take into account the land requirements of the industry. The Report, at pp. 50-1, stated:

> *Land Requirements*
>
> It is beyond the scope of this Commission to undertake a detailed analysis of present and future prospects for the Island farm industry. The complex maze of Federal government agricultural policies which have such farreaching implications for Island agriculture form a study in themselves. However, the Commission has been told on numerous occasions that there are strong reasons to believe that the farm industry can be strengthened, maintained and expanded on Prince Edward Island. It is also aware of the central role of agriculture within the overall thrust of the Province's current economic development policy.
>
> *The Commission is therefore persuaded that in the interests of the continued growth and prosperity of this industry and the Island economy as a whole, it is important to guarantee continued agricultural access to Class 2f, 3w, 3m, 3ms and 3t soils. These soils should be indicated as prime agricultural use areas on the general land use plan, with the guideline that they be retained wherever possible for agricultural use.* [Emphasis added.]
>
> It is only too easy to justify alternative uses for this agricultural land base on the basis of the present surplus of approximately 110,000 cleared acres of Class 2 and Class 3 agricultural land. But, the fact is that without these soils the Island economy would be in serious distress. Even the growing tourist industry is based in large measure on the aesthetic of an *agricultural* [emphasis original] landscape.
>
> The Commission feels that the preservation of this high quality, cleared resource base for agriculture is a matter of paramount importance. Future opportunities for agricultural growth are likely to be passed over if this land has to be cleared again from trees.

Consequently, the Commission recommended that: "Class 2f, 3w, 3m, 3ms and 3t soils should be indicated as prime agricultural use areas on the general land use plan, with the guideline that they be retained wherever possible for agricultural use."

Was this recommendation, made by the 1973 Royal Commission implemented? We find it was not. No general land use plan was ever formulated. Part I of the Regulations made pursuant to the *Planning Act,* R.S.P.E.I. 1988, cap. P-8 contains a "Statement of General Planning Principles and Policies". These contain a number of provisions that voice the objective of preserving agricultural land but none of these measures are tied into the effective application of other regulatory sections. Thus, the Regulations state that the subdivision requirements are designed "to control haphazard and unplanned development and prevent unnecessary loss of prime agricultural land" and that large residential subdivisions, consisting of five or more lots, will be approved in rural aeas only if the developer "is not taking Class 2 or 3 agricultural land out of production prematurely or unnecessarily". However, Part V of the Regulations, which detail the existing rules on subdivision criteria that would enable the fulfillment of such objectives, does not contain any provisions that would effectively enact these goals.

Let us examine the picture that emerges with regard to the current land use patterns in the agricultural sector. First indications may be gleaned from Comparison of Selected Census Farm Data [for] Prince Edward Island 1976, 1981 and 1986", found in "Province of Prince Edward Island Fifteenth Annual Statistical Review, 1988" (March, 1989) which we have reproduced below as Table 1:

TABLE 1

COMPARISON OF SELECTED CENSUS FARM DATA
PRINCE EDWARD ISLAND 1976, 1981 & 1986

	1976	1981	1986
Total Number of Census Farms	3,677	3,154	2,833
Total Farm Population	15,790	12,015	10,275
Total Land Area (acres)	1,339,040	1,399,040	1,399,040
Area in Census Farms (acres)	731,035	699,367	673,196
Use of Farm Lands (acres)			
Improved Land	503,558	500,853	460,399
Cropland (1)	391,534	391,118	386,715
Pasture	95,787	89,521	55,899
Other	16,237	20,214	17,785
Unimproved Land	227,477	198,514	212,797
Woodland	184,471	161,687	151,225
Other	43,006	36,817	61,572
Total Capital Value ($)	326,480,636	699,470,045	738,631,854
Value of Land & Bldgs. ($)	218,193,757	478,844,864	489,544,771
Value of Machinery & Equipment ($)	75,180,649	148,971,254	170,804,062
Value of Livestock & Poultry ($)	33,106,230	71,653,927	78,283,021

1: Cropland includes the total area of all field crops, plus the acres of fruits, vegetables, greenhouse, mushroom houses and nursery products.

Note: The 1986 Census defines a census farm as a farm, ranch or other agricultural holding with sales of agricultural products of $250 or more during the 12 months period prior to the Census. Operations which anticipated sales of $250 or more in 1981 were also included. Comparisons between 1986 data and previous censuses are made in this table and the next three tables. The 1976 data refers to census farms with sales of $50 or more during the year 1975.

Source: Statistics Canada 1981 Census of Canada, Catalogue 92-901 and 1986 Census of Canada, Catalogue 94-129, Population: Canada, provinces, urban size groups, rural non-farm and rural farm acres. Statistics Canada 1986 Census of Agriculture, Catalogue 96-104, Prince Edward Island.

This data indicates that the trends found in 1973 have continued: the number of farming units have declined, the amount of land in agricultural production has declined but the economic indicators have shown enhanced value in all categories.

More detailed statistics, not evident in Table 1 (but clearly shown in Tables below) also point to an increase in the average size of remaining farm units together with a marked increase in the number of farms that have large acreages. Tables 2-5, (which reflect portions of Tables 1 - 4 found in the 1987/88 edition of "Agricultural Statistics for the Province of Prince Edward Island") provide a number of additional clues to current trends.

CENSUS STATISTICS
TABLE 1

Selected Provincial Data	**1976**	**1981**	**1986**	**1986 as a % of 1976**	**1986 as a % of 1981**
Number of Farms (1)	3,677	3,154	2,833	77.0	89.8
Total Area in Farms (ac)	731,035	699,367	673,196	92.1	96.2
Improved Land	503,558	500,853	460,399(2)	91.4	91.9
Under Crops	391,534	391,118	386,715	98.8	98.9
Pasture	95,787	89,521	55,899(2)	58.4	62.4
Summerfallow	5,791	7,481	6,541	113.0	87.4
Other Improved Land	10,446	12,733	11,244	107.6	88.3
Unimproved Land	227,477	198,514	212,797	93.5	107.2
Woodland	184,471	161,697	151,225	82.0	93.5
Other Unimproved Land	43,006	36,817	61,572(2)	143.2	167.2
Total Capital Value ($)	326,480,636	699,470,045	738,631,854	226.2	105.5
Value of Land and Buildings	218,193,757	478,844,864	489,544,771	224.4	102.2
Value of Machinery and Equipment	75,180,649	148,971,254	170,804,062	227.2	114.6
Value of Livestock and Poultry	33,106,230	71,653,927	78,283,021	236.5	109.2

Farms Classified by Sales Total Value of Agricultural Products Sold	**1976 # of Farmers**	**%**	**1981 # of Farmers**	**%**	**1986 # of Farmers**	**%**
$250,000 and Over	(149	4.0	82	2.6	152	5.4
100,000 - $249,999	(		299	9.5	401	14.2
50,000 - 99,999	224	6.1	414	13.1	433	15.3
25,000 - 49,999	367	10.0	473	15.0	422	14.9
10,000 - 24,999	727	19.8	569	18.0	496	17.5
5,000 - 9,999	543	14.8	386	12.2	292	10.3
2,500 - 4,999	514	14.0	362	11.5	262	9.2
Under $2,500	1,146	31.1	569	18.1	375	13.2
Institutional Farms	7	0.2	(3)		(3)	

Farms Classified by Size of Farms	**1976 # of Farmers**	**%**	**1981 # of Farmers**	**%**	**1986 # of Farmers**	**%**
Size of Farms (ac)						
Under 3 Acres	34	0.9	77	2.4	100	3.5
3 - 9	60	1.6	72	2.3	80	2.8
10 - 69	575	15.7	423	13.4	380	13.4
70 - 129	961	26.1	735	23.3	558	19.7
130 - 179	562	15.3	457	14.5	383	13.5
180 - 239	549	14.9	414	13.1	381	13.4
240 - 399	585	15.9	577	18.3	512	18.1
400 - 559	207	5.6	217	6.9	231	8.2
560 - 759	76	2.1	87	2.8	101	3.6
760 - 1,119	40	1.1	57	1.8	67	2.4
1,120 - 1,599	18	0.5	24	0.8	20	0.7
1,600 Acres & Over	10	0.3	14	0.4	20	0.7

Area of Crops on Farms (ac)	**1976**	**1981**	**1986**	**1986 as a % of 1976**	**1986 as a % of 1981**
Wheat	16,197	8,127	11,803	72.9	145.2
Oats	46,587	33,127	24,460	52.5	73.8
Barley	26,090	53,237	65,770	252.1	123.5
Mixed Grain	82,800	84,547	66,376	80.2	78.5
Rye	934	2,423	4,496	481.4	185.5
Corn for Silage	11,496	6,313	3,506	30.5	55.5
Tame Hay	137,899	123,754	126,434	91.7	102.2
Potatoes	51,621	63,878	64,219	124.4	100.5
Tobacco	3,457	4,018	3,669	106.1	91.3
Vegetables	5,765	4,123	2,773	48.1	67.2
Small Fruits	899(4)	1,007(4)	2,032(4)	N/A	N/A
Population					
Total Population	118,229	122,506	126,646	107.1	103.4
Farm Population	15,792	12,160	10,380	N/A(2)	N/A(2)

(1) 1976 includes holdings with sales of $50 or more.
1981, 1986 includes holdings with sales of $250 or more.

(2) Not directly comparable to previous years because of definition change.

(3) In 1981, 1986, all Institutional Farms are included in their specific sales class.

(4) 1976,1981, area to be harvested.
1986, area under cultivation

Source: 1976, 1981, 1986 Censuses of Agriculture

TABLE 2

Kings County	1976	1981	1986	1986 as a % of 1976	1986 as a % of 1981
Number of Farms (1)	664	586	520	78.3	88.7
Total Area in Farms (ac)	161,726	148,810	140,817	87.1	94.6
Improved Land	91,665	86,422	80,056(2)	87.3	92.6
Under Crops	73,151	66,777	66,748	91.2	100.0
Pasture	14,677	14,645	8,559(2)	58.3	58.4
Summerfallow	1,756	1,892	1,287	73.3	68.0
Other Improved Land	2,081	3,108	3,462	166.4	111.4
Unimproved Land	70,061	62,389	60,761	86.7	97.4
Woodland	60,172	53,572	45,704	76.0	85.3
Other Unimproved Land	9,889	8,817	15,057(2)	152.3	170.8
Total Capital Value ($)	55,703,198	110,489,573	117,177,438	210.4	106.0
Value of Land and Buildings	36,577,609	74,144,485	74,901,296	204.8	101.0
Value of Machinery and Equipment	13,759,726	24,931,486	30,565,885	222.1	122.6
Value of Livestock and Poultry	5,365,863	11,412,602	11,710,257	218.2	102.6

Farms Classified by Sales

Farms Classified by Sales	1976	1981	1986	1986 as a % of 1976	1986 as a % of 1981
$250,000 and Over	(	11	23	-	209.1
100,000 - $249,999	(30	60	68	303.3	113.3
50,000 - 99,999	48	68	72	150.0	105.9
25,000 - 49,999	58	67	76	131.0	113.4
10,000 - 24,999	122	96	74	60.6	77.1
5,000 - 9,999	76	58	58	76.3	100.0
2,500 - 4,999	94	78	55	58.5	70.5
Under $2,500	236	148	94	39.8	63.5
Institutional Farms	-	(3)	(3)	-	-

Farms Classified by Size

Size of Farms (ac)	1976	1981	1986	1986 as a % of 1976	1986 as a % of 1981
Under 3 Acres	3	10	20	666.7	200.0
3 - 9	5	8	13	260.0	162.5
10 - 69	72	57	56	77.8	98.2
70 - 129	144	121	85	59.0	70.2
130 - 179	100	92	63	63.0	68.5
180 - 239	115	78	75	65.2	96.2
240 - 399	135	126	112	83.0	88.9
400 - 559	54	57	47	87.0	82.4
560 - 759	19	18	29	152.6	161.1
760 - 1,119	10	10	13	130.0	130.0
1,120 - 1,599	4	7	3	75.0	42.8
1,600 Acres & Over	3	2	4	133.3	200.0

Area of Crops on Farms (ac)	**1976**	**1981**	**1986**	**1986 as a % of 1976**	**1986 as a % of 1981**
Wheat	4,692	1,121	2,606	55.5	232.5
Oats	9,885	6,476	4,757	48.1	73.4
Barley	5,861	6,976	9,131	155.8	130.9
Mixed Grain	13,825	16,519	12,681	91.7	76.8
Rye	456	1,012	1,314	288.2	129.8
Corn for Silage	1,391	455	167	12.0	36.7
Tame Hay	25,092	21,670	21,994	87.6	101.5
Potatoes	8,137	8,896	8,518	104.7	95.8
Tobacco	2,011	2,055	1,867	92.8	90.8
Vegetables	206	375	268	130.1	71.5
Small Fruits	353(4)	288(4)	718(4)	N/A	N/A
Population					
Total Population	18,578	19,215	19,509	105.0	101.5
Farm Population	2,843	2,322	1,960	N/A(2)	N/A(2)

(1) 1976 includes holdings with sales of $50 or more.
1981, 1986 includes holdings with sales of $250 or more.

(2) Not directly comparable to previous years because of definition change.

(3) In 1981, 1986, all Institutional Farms are included in their specific sales class.

(4) 1976, 1981, area to be harvested.
1986, area under cultivation.

Source: 1976, 1981, 1986 Censuses of Agriculture

TABLE 3

Prince County

	1976	1981	1986	1986 as a % of 1976	1986 as a % of 1981
Number of Farms (1)	1,228	1,084	992	80.8	91.5
Total Area in Farms (ac)	266,963	262,881	256,201	96.0	97.4
Improved Land	190,275	195,722	182,338(2)	95.8	93.2
Under Crops	151,804	156,217	155,914	102.7	99.8
Pasture	32,893	31,764	19,736(2)	60.0	62.1
Summerfallow	2,315	3,342	3,197	138.1	95.7
Other Improved Land	3,263	4,399	3,491	107.0	79.4
Unimproved Land	76,688	67,158	73,863	96.3	110.0
Woodland	60,280	51,993	53,022	88.0	102.0
Other Unimproved Land	16,408	15,165	20,841(2)	127.0	137.4
Total Capital Value ($)	116,473,664	274,973,116	288,015,346	247.3	104.7
Value of Land and Buildings	74,851,208	187,906,368	194,179,881	259.4	103.3
Value of Machinery and Equipment	31,148,058	64,436,958	66,826,835	214.5	103.7
Value of Livestock and Poultry	10,474,398	22,629,790	27,008,630	257.8	119.3

Farms Classified by Sales

$250,000 and Over	(	41	64	-	156.1
100,000 - $249,999	(66	109	141	310.6	129.4
50,000 - 99,999	78	161	162	207.7	100.6
25,000 - 49,999	144	186	159	110.4	85.5
10,000 - 24,999	262	179	173	66.0	96.6
5,000 - 9,999	194	132	86	44.3	65.2
2,500 - 4,999	164	111	94	57.3	84.7
Under $2,500	316	165	113	35.8	68.5
Institutional Farms	4	(3)	(3)	-	-

Farms Classified by Size

Size of Farms (ac)					
Under 3 Acres	18	35	47	261.1	134.3
3 - 9	16	28	26	162.5	92.8
10 - 69	172	122	122	70.9	100.0
70 - 129	290	231	174	60.0	75.3
130 - 179	181	148	133	73.5	89.9
180 - 239	204	147	118	57.8	80.3
240 - 399	207	215	191	92.3	88.8
400 - 559	78	88	96	123.1	109.1
560 - 759	30	27	39	130.0	144.4
760 - 1,119	18	25	25	138.9	100.0
1,120 - 1,599	10	10	10	100.0	100.0
1,600 Acres & Over	4	8	11	275.0	137.5

Area of Crops on Farms (ac)	**1976**	**1981**	**1986**	**1986 as a % of 1976**	**1986 as a % of 1981**
Wheat	4,229	1,251	1,896	44.8	151.6
Oats	19,077	16,800	11,825	62.0	70.4
Barley	11,970	26,832	32,305	269.9	120.4
Mixed Grain	25,055	18,687	15,451	61.7	82.7
Rye	172	279	1,698	987.2	608.6
Corn for Silage	4,403	2,707	1,790	40.6	66.1
Tame Hay	47,264	43,650	46,108	97.6	105.6
Potatoes	32,721	40,185	39,775	121.6	99.0
Tobacco	54	354	(5)	-	-
Vegetables	3,868	2,593	1,192	30.8	46.0
Small Fruits	123(4)	222(4)	662(4)	N/A	N/A

Population

Total Population	43,237	42,821	43,677	101.0	102.0
Farm Population	5,509	4,211	3,590(2)	N/A	N/A

(1) 1976 includes holdings with sales of $50 or more.
1981, 1986 includes holdings with sales of $250 or more.

(2) Not directly comparable to previous years because of definition change.

(3) In 1981, 1986, all Institutional Farms are included in their specific sales class.

(4) 1976, 1981, area to be harvested.
1986, area under cultivation.

(5) Confidential.

Source: 1976, 1981, 1986 Censuses of Agriculture

TABLE 4

Queens County

	1976	1981	1986	1986 as a % of 1976	1986 as a % of 1981
Number of Farms (1)	1,785	1,484	1,321	74.0	89.0
Total Area in Farms (ac)	302,346	287,676	276,178	91.3	96.0
Improved Land	221,618	218,709	198,005(2)	89.3	90.5
Under Crops	166,579	168,124	164,053	98.5	97.6
Pasture	48,217	43,112	27,604(2)	57.2	64.0
Summerfallow	1,720	2,247	2,057	119.6	91.5
Other Improved Land	5,102	5,226	4,291	84.1	82.1
Unimproved Land	80,728	68,967	78,173	96.8	113.3
Woodland	64,019	56,132	52,499	82.0	93.5
Other Unimproved Land	16,709	12,835	25,674(2)	153.6	200.0
Total Capital Value ($)	154,303,774	314,007,356	333,439,070	216.1	106.2
Value of Land and Buildings	106,764,940	216,794,011	220,463,594	206.5	101.7
Value of Machinery and Equipment	30,272,865	59,602,810	73,411,342	242.5	123.2
Value of Livestock and Poultry	17,265,969	37,610,535	39,564,134	229.1	105.2
Farms Classified by Sales					
$250,000 and Over	(	30	65	-	216.7
100,000 - $249,999	(53	130	192	484.9	147.7
50,000 - 99,999	98	185	199	203.1	107.6
25,000 - 49,999	165	220	187	113.3	85.0
10,000 - 24,999	343	294	249	72.6	84.7
5,000 - 9,999	273	196	148	54.2	75.5
2,500 - 4,999	256	173	113	44.1	65.3
Under $2,500	594	256	168	28.3	65.6
Institutional Farms	3	(2)	(2)	-	-
Farms Classified by Size					
Size of Farms (ac)					
Under 3 Acres	13	32	33	253.8	103.1
3 - 9	39	36	41	105.1	113.9
10 - 69	331	244	202	61.0	82.8
70 - 129	527	383	299	56.7	78.1
130 - 179	281	217	187	66.5	86.2
180 - 239	230	189	188	81.7	99.5
240 - 399	243	236	209	86.0	88.6
400 - 559	75	72	88	117.3	122.2
560 - 759	27	42	33	122.2	78.6
760 - 1,119	12	22	29	241.7	131.8
1,120 - 1,599	4	7	7	175.0	100.0
1,600 Acres & Over	3	4	5	166.7	125.0

Area of Crops on Farms (ac)	1976	1981	1986	1986 as a % of 1976	1986 as a % of 1981
Wheat	7,276	5,755	7,301	100.3	126.9
Oats	17,625	9,851	7,878	44.7	80.0
Barley	8,259	19,429	24,334	294.6	125.2
Mixed Grain	43,920	49,341	38,244	87.1	77.5
Rye	306	1,132	1,484	485.0	131.1
Corn for Silage	5,702	3,151	1,549	27.2	49.2
Tame Hay	65,543	58,434	58,332	89.0	99.8
Potatoes	10,762	14,797	15,926	148.0	107.6
Tobacco	1,392	1,609	(5)	-	-
Vegetables	1,691	1,153	1,312	77.6	113.8
Small Fruits	423(4)	496(4)	651(4)	N/A	N/A

Population					
Total Population	56,414	60,470	63,460	112.5	104.9
Farm Population	7,440	5,627	4,835(2)	N/A	N/A

(1) 1976 includes holdings with sales of $50 or more.
1981, 1986 includes holdings with sales of $250 or more.

(2) Not directly comparable to previous years because of definition change.

(3) In 1981, 1986, all Institutional Farms are included in their specific sales class.

(4) 1976, 1981, area to be harvested.
1986, area under cultivation.

(5) Confidential.

Source: 1976, 1981, 1986 Censuses of Agriculture

Tables 2, 3, 4 and 5 indicate that these agricultural trends are consistent across the province, although they are usually most pronounced in Kings County and often least pronounced in Prince County.

These patterns must be considered in tandem with the land capabilities. The 1988 Prince Edward Island Soil Survey ("Soils of Prince Edward Island") provided a detailed analysis on the capabilities of the province's land base using a soil capability classification system. The data complied in this report at pp. 93-6 showed the following results which we have used to prepare Table 6:

TABLE 6

	Area (ha)	Acres	% of land area
Total Class 1 Soils	Nil	Nil	0.0%
Total Class 2 Soils	210,456	520,036	36.7%
Total Class 3 Soils	125,860	311,000	21.9%
Total Class 4 Soils	97,394	240,661	17.0%
Total Class 5 Soils	11,787	29,126	2.1%
Total Class 6 Soils	Nil	Nil	0.0%
Total Class 7 Soils	86,098	212,748	15.0%
Organic Soils	6,337	15,659	1.1%
Other Units*	35,593	87,950	6.2%
TOTAL**	573,525	1,417,180	100.0%

* Other units consist of airport (711 ha.); cemetery land (68 ha.); coastal beach (9,466 ha.); dune sand (2,338 ha.); pit borrow (1,346 ha.); pit gravel (361 ha.); steep land (145 ha.); stream complex (12,971 ha.); and salt marsh (8,187 ha.)

** An additional 1,398 ha. is allocated to ponds and lakes to provide a total area of 574,923 ha.

As Table 6 shows, more than one-third of the land in the province is Class 2 soil, while nearly 60% - 58.6% to be precise - is either Class 2 or Class 3. These two categories of soils encompass some 831,036 acres. When we match the amount of Class 2 and Class 3 soil in the province with the total area in farms, the statistics suggest we have considerable reserve on which to draw for agricultural expansion: 157,840 acres of Class 2 and 3 soils using the 1986 data on total area in farms.

In spite of these comforting statistics we are not convinced that the preservation of agricultural land can continue to be accorded the ambivalence that has been the hallmark of this subject.

As we have indicated the 1973 Royal Commission found 673,531 acres of Class 2 land, 351,537 acres of Class 3 land and 117,400 acres of Class 4 land. *The data found in the 1988 Soil Survey indicates that since the 1973 Royal Commission reported the amount of Class 2 acreage - the best of soils in the province - has declined by more than 150,000 acres. Class 3 land has increased by 40,000 acres and Class 4 land has more than doubled.* Other categories, which totalled 258,842 acres when the 1973 Royal Commission made its findings, now number 345,483 acres.

Considering the data from another perspective, the 1973 Royal Commission found "almost exactly one million acres (1,025,068) acres are rated as Class 2 and Class 3". The 1988 Soil Survey data indicates 831,036 acres are now rated as either Class 2 or Class 3.

While the Royal Commission of 1973 cautioned about "adjustments", we find these trends indicative of a notable and troubling decline in agricultural land capability over a very brief timespan.

Possibly some measure of these variations may be attributable to differences in evaluation or other criteria used in the classification process itself. For example, land that was "marginally" Class 2 in one inventory could be termed "Class 3" without necessarily suffering any significant soil degradation.

But we have been provided with a number of individual examples that point to serious deterioration in the quality of our land base. One example will serve to illustrate: a parcel of land deemed to be, in part, Class 2 acreage and, in part, Class 3 acreage when it was acquired in 1973 was tested in 1990. Eight acres were classified as Class 4 and the balance was said to be no longer useful for agricultural purposes. The clear tendency towards a decline in soil quality points to soil degradation as being a component so significant and alarming we have dealt with this issue as a separate chapter in our report under the title "Soil Erosion and Degradation".

Having a reserve of land with agricultural potential is not sufficient reason to be complacent about measures to preserve land for agricultural industry of tomorrow. There are a number of other factors that must be taken into account.

The statistics provide no indication as to what proportion of Class 2 and Class 3 agricultural lands have already been committed to other uses that are incompatible or even in conflict with agriculture. Only the relatively minor allocations for the airport and cemeteries in the soil survey, for instance, give some small measure of allowances for this.

Even when data is prescribed for other land uses, these statistics can be misleading, particularly in light of the province's settlement patterns. Evidence of this tendency to read the statistics improperly was clearly indicated, for example, in studies presented in respect to the fixed link where it was assumed that the use of 100 acres of land to provide 100 one-acre cottage lots would mean a loss of 100 acres of farmland. Suitably located on marginal lands, there might not be any loss of existing farm area or potential agricultural land. On the other hand, scattered locations sprinkled amidst prime farmland can mean effective loss of hundreds of acres for a variety of reasons. Cottages require roads and lanes for access. Utility easements subtract from the effective aggregate of the land base. Each slice of land from a parcel may mean more fencing or other buffers to prevent conflicts from arising between cottage owners and farmers. The loss may be a *de facto* one, such as where a farmer elects to widen buffers or otherwise curtail the use of an adjoining parcel. Cottage development may spell the onset of other development: a golf course or other seasonal businesses that use the land base for purposes other than agriculture. Open space land is often equated with land that is available for agriculture. But the "open space" may not be adequate to be farmed economically, even if the soil is excellent for that purpose.

The pattern of ribbon development and scattered settlement throughout the province make it all but impossible to determine what reserve of agricultural land exists. There are those who argue that, if need be, large acreage building lots can be converted into agricultural production in a fashion akin to the cultivation of British victory gardens used in World War II to keep a nation at war fed. We are interested, however, in ensuring that there be sufficient land for commercial agricultural production for those engaged in the province's leading industry. In that regard, we have considerable concerns.

During the course of our public hearings, we had the opportunity to meet with a number of people actively involved in agricultural pursuits. Many of these individuals were people in the forefront of their industry. From what they told us, we formed the conclusion that there is no single picture to describe the availability of good land for agriculture in the province.

In parts of Prince Edward Island, farmland is available and the price is low. Most frequently, it was portions of Kings County that were cited in this regard. There was relative consensus that there was little or no surplus of Class 2 land not being farmed at the present time. In some areas, the limited availability of land, the rising price for agricultural land and the competition from other potential land usages were combining to create a crisis of some urgency now. This was particularly so in the eastern Prince/western Queens section of the province. Even during 1989, we were given indications that the demand for agricultural land in that section of the province was outstripping supply. Competition for land for recreational use or for tourism industry usages was causing prices to rise and it was within that sector where conflicts between farming practices and the lifestyles of other users were most in evidence.

Pressures on the land base in this area, we suspect, have been building for some time. This is the area most favourably situated for easy access to the Borden ferry - an attractive advantage for anyone with a product to ship by truck out of the province. The location of the Cavendish Farms processing plant in New Annan also makes the area a preferred location for potato growers who have contracts with the plant. (Not only does the proximity of the processor reduce transportation costs, but it may be a significant factor in relation to the type of vehicle needed to haul the product during cold weather. More distant producers need trucks that protect potatoes from freezing while those closer at hand may be able to do with less.) In addition to these factors directly related to the agricultural sector, the area was within the "golden triangle" emphasized by both the province and the tourism industry - a fact that has produced not only growth in recreational attractions and tourism infrastructure but which has also stimulated demands for the second home summer cottage location particularly on waterfront settings within the area. To compound these factors, the announcement of a fixed link terminating in the Borden area prompted a further interest derived from land speculation. While these very elements were the essentials in the marketplace, we understand that the situation with respect to agricultural land, both in terms of its availability and its price, was markedly different than elsewhere in the province (with some exceptions because of urban proximity or unusual natural features.) The announcement of first one, then two new potato processing plants generated somewhat of a "land boom" in the area, even before any announcement on location was made by McCains and in the face of the publicized intention to locate the second Cavendish Farms operation in West Prince. Unconfirmed reports suggested "good" agricultural land in this region - already at a price several times the "going rate" for "good" agricultural land elsewhere - jumped as much as $500/acre within a week.

The dilemma presented to us, time and time again, by the farming community is a familiar one. Agricultural land must be affordable for young farmers wishing to gain entry into the industry. It must be priced cheaply if farm expansion is to be economical. On the other hand, members of the farm community want to see high land prices when they retire. This latter point has led commentators to observe that the farmer on the eve of retirement becomes a land speculator. In Prince Edward Island, the farm community supports these conflicting objectives and they have translated the wish for high land prices into the endorsement of a principle that the farmer on retirement should have the "right to sell to whomever he wishes".

The position being put forward by the farming community is illogical and its proponents readily admit to the basic inconsistency of their goals.

However, we see other contradictions in addition to the most obvious one of desiring cheap land prices when one is buying and expensive selling prices when one is cast in the role of vendor. By saying that sellers should have the right to sell to the highest bidder, the farming community indicates an opposition to any form of control on land *ownership*. Yet they simultaneously embrace the provisions of the *Lands Protection Act* that regulate ownership by limiting the quantum of land that may be owned. Indeed, many urged us to impose greater restrictions on ownership to limit the quantity of land that may be owned by "corporate farm" owners and/or processing plant owners.

On numerous occasions, we asked members of the farming community to respond to the suggestion that land *use* be regulated. Measures that would prescribe the use of the land would not curtail the land owners ability to sell to the highest bidder, except in so far as a potential purchaser who wanted to convert the land to another use would not come forward or the price would be predicated on agricultural usage and not some other usage that would command a higher market value. The farming community expressed opposition to such a plan, as well, readily admitting their objectives amounted to a case of wanting to have their "cake and eat it too".

In opposition to the suggestion that the use of rural land be regulated, several of those who spoke from the viewpoint of the farming community felt this would penalize farmers on the eve of retirement. The land owned by retiring farmers represented their savings for retirement and should not be jeopardized. It was a sacrifice, financially, not asked of other members of society, they argued.

While we can appreciate the argument, we do not agree with it in this totality. The urban landowner has lived with zoning regulations for nearly a century. The homeowner with a single-family dwelling may well have a substantial portion of his/her life savings invested in the property. The property can be sold to the highest bidder but, unless the zoning is changed, the use is still restricted. On occasion, zoning is changed and the new usage in what was once a residential area can result in a "windfall" increase in the value of the property. But whether or not that "windfall" profit will be available to the homeowner usually depends on a myriad of factors relating to overall neighbourhood changes, not the passing fancy of a single owner or buyer. The farming community want the continued opportunity to avail themselves of windfall potentials at the point of retirement, even though such an unfettered marketplace has long ceased to exist for many other land owners.

One of the central challenges we have faced as a Royal Commission is to determine a resolution to this dilemma, to "bite the bullet" on this issue. If we are to uphold the "right" to allow the owners of agricultural land to continue to sell their lands on an unfettered basis, then we must recommend the limits to land ownership prescribed by the *Lands Protection Act* be removed. We are not prepared to do this.

Moreover, an unregulated marketplace in land will only exacerbate what we perceive to be rising conflicts among competing land usages in rural areas. This is a subject we address in detail in the pages ahead. Suffice it to say, now, that the call for right-to-farm legislation in this province is evidence that such conflicts are already being felt at the local level. At our hearings we were told frequently that the problem lay not with the first generation of non-farming ruralites. The original landowner who builds a home in the countryside may be cognizant of farming needs. But the successor in title often lacks the same sympathetic approach to agriculture or is unaware of the negative sides to rural living in a farming environment.

Finally, all evidence indicates that, without restraints, it is the best of agricultural land that is first converted to competing uses. Flat, well drained land with rich top soil is the preferred choice for housing development, for highways and for other uses that removes land from agricultural production.

A number of jurisdictions have undertaken measures to ensure that agricultural land is preserved for agricultural use. The first step in this process is the recognition that agricultural land is not "undeveloped land" awaiting "development". *Agricultural land is already developed and is part of the province's "working landscape".*

Even though agriculture is, has been and will likely continue to be the foremost industry in the province, the Government of Prince Edward Island has *never* recognized its agricultural land as its foremost natural resource. Governments, over the years, have repeatedly promoted and facilitated measures that have in effect robbed the province's leading industry of its most important resource. Public buildings, such as schools, have been built in locations that have taken valuable acreage out of production, broken up the tenure of farm holdings, rather than utilize sites less attractive to the production of crops. Government agencies, such as the L.D.C. and P.L.A., have sold properties without restricting their successors in title to agricultural usages. Indeed, some properties flowing through public ownership have been advertised for their resale potential as residential subdivisions or as recreational properties, prized for their shore frontage. Are these the hallmarks of a goal to preserve agricultural land for future generations or even to make it attractive for people now participating in the agricultural sector? We think not.

Appendices C and D in Volume II contain a number of examples where other jurisdictions in Canada and the United States have enacted a variety of measures to preserve land for agricultural usage. Two central measures are used: development rights and zoning, although the specific program differs from one jurisdiction to another. Whichever measure is adopted, the prerequisites include the creation of some form of masterplan and a committment to the concept of planning.

The use of a "development rights" program may be by way of purchase or transfer. John Spellman in "Kings County's Purchase of Development Rights Program", an article described an agricultural preservation project in one portion of Washington State, described the essence of the scheme in these words:

> "The purchase of development rights is the purchase of the right to develop from owners of specific parcels, leaving the owner all the other rights of ownership. The price of the rights is diminution in the market value of the land as a result of the removal of development rights. The remaining value of the land is the "farm use" value.

The transfer of development rights (TDR) is more complex than the purchase of development rights (PDR) (and this scheme is more fully described in Appendix C).

On its face, a PDR program is an ideal way to allow members of the farm community to have what otherwise appear to be irreconcilable goals. The farmer receives cash without even selling his land; at his retirement, the land can be sold for its market value as agricultural land. The main drawback to a PDR program is that it is prohibitively expensive. Even relatively well-endowed jurisdictions in the United States have conceded that a PDR program is "too rich" for the public purse. Moreover, a PDR program that is voluntary in its application may not yield the desired results; instead of having large areas of land preserved for agricultural use, a PDR program may result in a patchwork of land usage - some reserved for agricultural usage, some not.

This is not to say that a program of TDR or PDR should be entirely ignored. While we are not advocating TDR or PDR as a means to preserve agricultural land, we feel one or both of these programs could be an effective tool to be used in certain situations where a public agency wants to limit usage of a property to such an extent that any and all uses of the property are severely curtailed. For example, in some portions of the Winter River Basin, the purchase of development rights would offer a means of protecting the watershed without actual purchase of the property.

The second method of dealing with agricultural preservation is that of zoning. This may be done in a variety of ways. For example, the quality of the soil could be used as the determinant of the usage of the property. This is a particularly suitable method in a jurisdiction where there are a variety of soil types, many of which are not suitable for agriculture. It is less useful in

Prince Edward Island where the great proportion of the land area is composed of Class 2, 3 and 4 soils. Moreover, the effect of this is to "reward" those who mine their soils, thereby enabling them to remove their lands from agricultural usage.

We feel the time has come to implement a comprehensive land use plan throughout the province, with a cornerstone of such a plan to be agricultural zoning for the best farmlands. It is a program that must involve the agricultural community in its design, development and application. To initiate such a plan, zoning must first be based on "existing use" over a fixed period of time. Government must be firm in its commitment to such an objective. The exercise is not one of debating the merits of preserving farm land or prescribing usage. Government must make its policy clear at the outset. Public participation must be keyed within certain parameters. An absence of a pronounced objective at the outset will not produce any constructive way out of the dilemma that has been debated for far too long - to the detriment of prime farmland in the province.

The preservation of farmland is not the only dimension of this issue. Patterns of land tenure are an important component, one identified nearly 20 years ago but *totally* neglected ever since. What do we mean by land tenure? We refer to the pattern of land holdings, the parcels of land that go to make up a farm. "Subdivisions" - the dividing of land into smaller parcels - have gone unabated. Nothing has been done to encourage the consolidation of parcels adjacent to one another. Nothing has been done to minimize the amount of travel involved in farming the holdings of a particular land owner.

This is not a subject which the farming community has addressed. But we asked farmers who came to our hearings the distances they travelled in order to carry out their farming operations. From the responses we learned it was not uncommon for a farmer to be using land located several miles away from his home base as part of his farming operation. If our agricultural community is to be competitive, it must use all means possible to reduce the cost of production. It is not cost effective in terms of time or money to travel such distances as *eight miles* in order to have a sufficient land base! Additional savings arise when a farmer can move from one parcel of land to another without using public roads, for this minimizes the outlay that must be made for road-worthy vehicles and machinery. Several European jurisdictions - where the land base is small - have recognized these factors and have instituted what the Dutch have referred to as a "Humpty Dumpty" exercise. France is a leading example of a jurisdiction where a post-war exercise in land assembly has begun to show results. Farms that once consisted of numerous small parcels scattered over the map are now taking shape as a few larger parcels of closer proximity to one another.

Land fragmentation, and its effect on the patterns of farming operations, was identified by the Beaulieu study in 1970. It has long been cited as a problem in the forestry sector. A project of this nature requires many years before results are tangible. Regrettably, this function was never identified by the L.D.C. in its two decades as a land bank. With such a high proportion of Island farmland flowing through L.D.C. ownership at one time or another, an active "Humpty Dumpty" exercise would now be at the stage of showing results. Instead, polices have been followed that have precisely the opposite effect. Separate parcels of land, adjacent or in close proximity to one another, have been sold to different owners, ensuring the break-up of original farming units. Parcels have been subdivided to allow further diversification of ownership, thereby enhancing land fragmentation patterns. While some flexibility needs to be an inherent part of any land assembly policy, the goal of preventing further land fragmentation and of encouraging consolidation should be pursued not in the context of expansion of farm size (although this may be the result in some instances) but in the interests of developing a more efficient land base from which farmers may operate.

During the course of our hearings, the Federation of Agriculture indicated their interest in a study to identify vacant farmland in the province. We are of the view that this is a vital study to be undertaken in order to achieve the goals and objectives of a comprehensive land use plan. We urge that the province work closely with the Federation to ensure that such a study is undertaken and completed as quickly as possible.

Accordingly, we recommend

- **THAT the province recognize its agricultural land base as its most important natural resource and coordinate government policies towards the preservation of agricultural land.**
- **THAT a comprehensive set of land use plans include a central objective aimed at keeping the most productive farmlands in agricultural use.**
- **THAT, as part of this land use planning exercise, a study be undertaken to identify vacant farmland, including all land with agricultural potential that is not being so used and farmland that is now being ill-used.**
- **THAT agricultural land in public ownership be subject to restrictions on its use and tenure before control through leasing or ownership is transferred to the private sector.**
- **THAT the Agricultural Development Corporation, in particular, and the province, in general, adopt a land policy that avoids the fragmentation of agricultural lands.**
- **THAT the Agricultural Development Corporation institute and promote a long-term "Humpty Dumpty" project within its own holdings and the agricultural community.**

Chapter 4

RURAL VS. URBAN

Throughout our hearings, numerous presentations were made regarding what might be seen as a clash between rural and urban cultures. This conflict is a complex, multi-dimensional, sociological phenomena involving many facets of individual lifestyles and many changes in the countryside. These changes are discussed by R. Alex Sim in a most informative, readable volume entitled *Land and Community: Crises in Canada's Countryside*. His opening chapter, "A Countryside Transformed" is essential to understanding the dynamics of what is happening to rural life today. He writes: "I see the rural community, not as a quiet haven to escape a turbulent world, but as a battered raft drifting downstream on a river of change." Sims makes the essential point that the traditional "rural versus urban" polarization is now entirely different because "rural" is no longer synonymous with agriculture. The problem indeed might be better defined as one of "Rural versus Farm".

The roots of this problem are easily identified. Fewer farms and farm families are part of the twentieth century evolution from a rural, agricultural predominance in settlement patterns and economic activities to urban living and jobs that are not centered on the land. As successive generations are more removed from these traditional patterns, the knowledge of farming practices and agricultural needs become more remote. City children, at one time, had grandparents or other relatives still on farms. Now this tie is being loosened further as time marches on and the number of farms dwindle. All the while, the nature of agriculture itself has been undergoing a revolution, not just in terms of an expansion to the size of farming operations but in the evolution from mixed to monocultural agriculture, in the types of machinery being used to carry on farming activities, the skills being practised to increase productivity and a host of other variables.

Sims explored the main elements of change in agriculture in this passage at pp. 30-1:

> The new commercial farming created by the new technology has the following characteristics:
>
> 1. The units of production, or farms, are *highly specialized,* usually concentrating on one commodity.
> 2. This specialization requires *intensive capitalization* which may be invested in more land if grain and fibre are produced or in new machines or specialized buildings such as greenhouses, feedlots, or automated poultry plants.
> 3. *Additional input costs*, over and above investment in land, machinery and plants, are required for the chemical and genetic refinements elaborated by applied science for agricultural use.
> 4. *Petro-chemical products* are required, such as inorganic fertilizers, herbicides, pesticides, and insecticides, as well as specialized fuels and lubricants for the machines.

> 5. *New genetic products,* such as plant and animal hybrids, created higher productivity in growth and finish, as well as resistance to diseases. But there has been a loss of resistance to other diseases and insects that require still more chemical palliatives. A new wave of innovations in genetic engineering is now a prospect with an array of new species and subspecies that promise still more new products that optimistically promise more efficiency.
>
> 6. The *sell what you grow - buy what you eat* syndrome has changed the character of farm life. In my childhood the big purchases were for flour, sugar, salt, and species. A substantial proportion of our nutritional and energy requirements was home grown. Few farms follow such a subsistence regime today and those that do are dismissed as marginal. Like industrial workers and entrepreneurs they sell the fruits of their labour and buy most of what they consume. Likewise, Canada now exports as much food as possible while searching abroad for imports that may be less expensive, or conversely more expensive because they are chic, different, or in vogue. If this system worked smoothly, if goods and wealth were distributed equitably, there would be no one to question the premise on which it is founded. In fact it does not work satisfactorily. The gap is constantly widening between the rich and the poor, while wealth is being concentrated in fewer centres of power. Commercialized agriculture has been drawn inexorably into the mainstream of world trade, while the land is being degraded, unsaleable surpluses are building up and there is hunger in every country of the world, even our own. I hear there are hungry farm families in Canada. The system of food production and distribution is not working as it should. Unnecessary hunger is the ultimate deprivation by which our food system must be judged. To be cut off from the land, to be ignorant of how things grow represents, to me, a serious spiritual loss, serious enough for those who live in cities, but a tragedy for those who live in the country.
>
> The mechanization of agriculture has changed farming from a craft to a link in the food chain. Whether or not it is the weak link remains to be seen. The operator of all but the largest farm still requires an impressive array of skills to deliver the produce at the farm gate. At the same time most of the produce moving toward ultimate consumption passes through a bewildering series of handlers, haulers, packagers, advertisers, inspectors, and futures brokers. [Emphasis original.]

In part, the rural/farming clash is the modern version of the old country/city differences, where both rural and urban dwellers lacked certain understandings or knowledge about differing needs and lifestyles. But the matter is now more complex for new settlement patterns have brought many people, growing proportions of whom do not have farming backgrounds in their immediate "roots", back into rural areas.

The changes in the characteristics of farming have been accompanied by changes in land owning patterns and practices among those engaged in the agricultural sector. Sims examined this trend with this description, at page 38:

> A persistent image of the countryside is its changelessness and its stability. One tends to think of farms passing from father to son for several generations. In 1967, the year of our centennial celebrations, many farms in Canada displayed the proud badge, "Century Farm", indicating a hundred years of occupancy by one family.

> Comparatively few farms now pass from generation to generation. What we have instead is a regular entry into and exit out of farming, as well as movement of established farmers from one property to another, from one level of gross sales to another. The effect of this movement needs assessment on personal adjustment, on family life, on community relationships, and on maintaining stable membership and regular participation in social organizations, significantly in farm organizations.
>
> The statistics of entry into and exit out of farming do not explain the causes of retention or change of ownership. Change must reflect, in part at least, bankruptcy and the general flux and instability in the industry. The data points directly to the costly and destabilizing practice of refinancing the purchase of land with each new generation of owners.
>
> The right to own land enticed my ancestors and other Europeans and British immigrants to brave the hazards of an Atlantic crossing. That right has been a cornerstone of our political system. There is now a perceptible shift in tenure from outright ownership of a farm to a variety of rental arrangements. Speculators, offshore financial interests, big corporations, as well as new ruralites, have accelerated this trend, as has the cost of land. Some of these new owners have no commitment to farming or to the community but are often willing to rent, at a reasonable rate, to a nearby farmer. These leases are seldom long-term and seldom bind the contracting parties to good stewardship of the land. The inflated values resulting from speculation discourage young people who want to start farming. Many newcomers, after a whirl at the apparently bucolic life, decide to sell, discovering that their skills or capital are unequal to the challenge. Some of these landowners are only weekenders who do not have the time, even when there is an inclination, to participate in community life. The novelty often pales, especially for teenage children, and as a result another property is for sale, another new ruralite needs to be initiated into the community.

The data on agriculture in Prince Edward Island and the impressions we formed from our hearings confirmed many (but not all) of these trends in the province. The stability of intergenerational farming is still evident but to a declining extent. The decreasing number of farms is counter-balanced by an expansion in farm sizes. Entry into farming, soon followed by an exit from agriculture, does not seem to be a prevalent trend, except perhaps at the hobbyist and marginal levels. But the increase in using land rental for farming operations is very evident. Farmers who attended our hearings did indicate more stability in the leasing patterns than the Sims' discussion would suggest. While farmland prices - and, in general, the high start-up costs - are a deterrent to young farmers, the uncertainty of the agricultural economy, the financial risks inherent in entry into farming, and the low returns generated from agriculture in the face of these factors, when considered in tandem with the work involved in farm operations, were among the prevalent reasons presented to us to explain why farming is not an attractive option for young people today.

On the other hand, countryside living is popular. Let us, once more, allow Sims to voice the general parameters of this popularity. He writes of the trend towards rural life at pp. 212 in these words:

> Rural as a concept is constantly challenged and frequently misused. For instance, it is regularly accepted as a synonym for farm. *Today fewer than four percent of Canadians live on farms, while about one-third of all Canadians live in the open country and in towns under 10,000 in population,* a total exceeding the combined population of Montreal, Toronto and Vancouver. *Between 1976 and 1981 the rural population of Canada grew at a faster rate than the urban sector, in spite of a steadily declining farm population - thus reversing a historical trend of rural depopulation.* Whether the trend continues is not relevant, although there are indications a reversal may have set in, at least in the United States. What is relevant is the fact that there is, and will continue to be, a significant proportion of the population living outside of cities, whose needs and interests should be understood.

In Prince Edward Island the residential growth that has ringed Charlottetown and, to a lesser extent, the various towns in the province has disguised this trend towards countryside settlement by those who are not engaged in agriculture. It has been masked further by the decline in farms in our countryside. Outside the immediate community, the replacement of a farming family by a non-farm one (which may, in fact, occur simply by virtue of the family's exit from the agricultural sector) goes unnoticed so long as the original homestead remains in place. But a drive into the countryside, where so many residences lack any traces of such agricultural accompaniments as barns or machinery, demonstrates the shift that is so evident from the statistical data. Equally evident is the growing popularity in seasonal, recreational properties.

Population data presented in our discussion on "Communities" suggests some 39,072 Islanders live in unincorporated areas. Another 26,231 live within Community Improvement Committee areas, most of which are likely to be judged as rural areas. Yet the 1986 census reported only 2,833 farms in the province using a definition of farm that included holdings with sales of $250 or more.

The problems engendered in this trend have been cited to us from a number of sectors. New ruralities, coming from urban backgrounds and accustomed to off-site water and sewer utilities, are unaware of septic tank maintenance requirements. Individual wells, more than adequate for a traditional lifestyle, cannot cope with the enhanced water demands engendered by automatic washers, dishwashers, saunas. Services such as snow plowing exist at a different level in the countryside. All this and much more require adjustments for new ruralities - and the "much more" embodies farming practices where noises and smells are at variance from the clean, quiet countryside image envisioned in the expectations of the non-farming ruralite. These changes within the countryside have been the background for neighbourhood disputes in rural areas. Unresolved differences elsewhere have looked to the judicial system for resolution. In turn, the agricultural community has sought protection from litigation by way of changes in legislation.

A number of farm organizations specifically requested that we recommend the adoption of "right to farm" legislation. On questioning this suggestion, however, we found that many of those making this proposal were not clear as to what such legislation should entail, beyond the enunciation of the principle ("right to farm") and a recognition that without such legislation they could be exposed to legal liability that could prove to be sufficiently costly that the farmer could lose the farm or that would require farming operations to cease.

To understand the proposed "right to farm" legislation, it is necessary first to examine some basic legal matters that go beyond legislation and second to consider why this call for new legislation has arisen. As all members of the legal profession are aware, there are two essential elements in the laws of our system of justice: written laws (in the form of statutes, bylaws and regulations whether enacted by the federal, provincial or municipal governments) and unwritten laws (collectively known as the "common law" and derived from the precedents of hundreds of thousands of judicial decisions made by judges in all jurisdictions that embrace the British common law system). In the event of a conflict between written law and unwritten law, the written law always prevails - although determining whether such a "conflict" is present may, on occasion, hinge on a matter of judicial interpretation and discretion. A large body of the common law is devoted to "torts" or civil wrongs, where the behaviour of one or more persons or corporations has caused harm to others and, although the behaviour is not necessarily one that violates the rules imposed by the state, the aggrieved person(s) can seek remedies through the courts. Two of the more common remedies for such wrongs are the payment of money (called "damages") to the aggrieved person(s) and a court order (an "injunction") that compels the person(s) (or corporations) to stop behaving in an injurious way. Tort law has included a wide catalogue of civil wrongs: trespass, assault, battery, false imprisonment, false arrest, nuisance and negligence are but some of the "wrongs" for which the courts are willing to provide redress to an aggrieved party in appropriate circumstances. Legal actions for "negligence" (carelessness) have been very common, particularly where a person has suffered physical injury or economic losses from the careless behaviour of another. Today, negligence actions arising from car accidents are probably the most common types of tort actions in the courts arising from negligence or, indeed, any kind of civil wrong. But there are civil wrongs that occur even when the behaviour was not at all careless. Legal actions, for example, can arise with respect to nuisance where the behaviour of a person(s) or corporation creates a nuisance for another. Among the behaviours that give rise to "nuisance" are actions that disturb enjoyment to a property. This is where the farming community's wish for right-to-farm legislation is rooted, for a neighbouring occupier of land can take legal action against a farmer claiming the noise or odour from the farming operation is a "nuisance", that the behaviour arising from farming procedures constitutes a civil wrong and that the person bringing the action should have a remedy. The usual outcome of a successful tort action is an order to pay "damages". If the amount of the monetary award is substantial, the farmer would find it necessary to sell assets in order to pay and, depending on the amount involved and the extent of the farmer's assets, it could be necessary for the farmer to sell the farm to pay the damage award. But, in addition to damages, the courts, in an action claiming there is a nuisance, will order whatever injunctive relief is needed to abate the nuisance. Depending on the circumstances, abating the nuisance may require the farmer to move a building, sell livestock or otherwise cease some farming practice that has created the problem; an injunction can, in effect, force the farmer out of business.

A perusal of the 75 volumes of the *Newfoundland & P.E.I. Reports* between 1971 and 1989 did not reveal any reported decisions involving nuisance where farming situations were involved, although there were about a dozen cases involving nuisance in other types of situations. This is not to say there has not been any legal action in this regard for not all decisions in these jurisdictions are included in this reporting series. Moreover, law suits are often commenced but settled before they reach the stage where a judge is called upon to render a decision. However, the absence of cases from the reporting series does suggest such actions have been relatively rare in these jurisdictions to date.

A review of the *Canadian Abridgement* series (which indexes many of the decisions made in courtrooms all across Canada) indicates that the common law with respect to nuisance has been used in a variety of circumstances throughout Canada, but those involving agricultural practices have been quite rare.

Legal actions claiming nuisance in farm situations have arisen, however, and a review of these cases illustrate the type of conflicts involved. It may be of some significance that the four Canadian decisions we have been able to locate all arose in Nova Scotia and New Brunswick. If there is any message to be gleaned from this, we submit it is not a reflection on the law regarding nuisance or a propensity towards litigious behaviour on the part of other Maritimers. Rather the cases may be a reflection on the changing nature of land use patterns in rural areas, combined with changing farming practices, both attempting to co-exist in relative small areas, usually without the benefit of adequate land use regulatory measures. Combined with this, we suspect a public attitudinal problem grounded in the misplaced idea that property ownership rights are so absolute that no consideration for neighbours need be taken into account. In reaching this conclusion, we note that all four legal actions began within the past decade in what might be characterized best as neighbourhoods undergoing change.

We would like to let the cases speak for themselves because they give an indication of not only the fine points of the common law with respect to nuisance but also an illustration of the clashes existing in the countryside. Therefore, we have prepared a detailed summary of these decisions and included the material as Appendix E in Volume II of our Report. These cases from neighbouring provinces provides us with ample opportunity to address the issues inherent in the request for right to farm legislation. We understand that what is being sought is an immunity from legal liability, either by way of damages or injunctive relief, for farming operations *providing that these are in conformity with established farm practices.*

We are of the view that the provision of such an immunity raises a number of questions.

First of all, any such legislation would need to define who might be the potential beneficiary of such immunity. Would this be resolved by defining persons who are engaged in the particular occupation of farming? If so, would "farmers" be defined by a criteria based on the percentage or amount of income derived from farming? (Such a definition might or might not extend the immunity to someone like the defendant in the *Fogarty* case since he was engaged in full-time off-farm employment). Or, would the immunity be extended on the basis of activities so that, for example, raising livestock or growing crops would be eligible for the immunity? Such an approach would, we submit, encounter considerable public outcry unless the immunity contained very specific criteria that varied with the type of activity. We are of the view that the general public might raise little objection to an immunity that related to a relatively benign activity but would be more anxious about the consequences as it related to certain types of farming, such as raising pigs in large numbers.

Secondly, the principle of "right to farm" is usually expressed with the proviso that the eligibility for the immunity would be contained within the parameters of "acceptable farming practices". Are the members of the farming community willing to accept the regulatory and supervisory regime needed to give legal effect to this proviso? If "acceptable farming practices" were to form one element to a defence in a lawsuit alleging negligence, we are of the view that the standards that need to be met in various aspects of farming in order to meet this goal would need to be defined in law and farming operations would be subject to an inspection system to determine whether or not such standards were being met. In the absence of provisions of this nature, we doubt that the courts in an action based on nuisance would be any more sympathetic to such a defence than was shown by the trial judge in the *Desrosier* case where "certificates of compliance" were dismissed by the trial judge. In that case, it was pointed out that such certificates are issued to farmers "who apply for them and who are operating in compliance with regulations, recommendations and guidelines of the Departments of Health, Agriculture and Environment for the handling and management of manure and waste." We are of the opinion that right-to-farm legislation that would provide effective immunity in the courts entails a regulatory regime which would likely be unacceptable to the farming community.

Difficulties with these issues, however, are not the only reasons why we are not prepared to endorse right-to-farm legislation as now advocated by farming organizations.

It is obvious from the reported cases that a balancing of interests is involved in determining disputes where one party is claiming the right to carry on an economic activity while an opposing party is asserting the right to the comfort and enjoyment of property being used for a different kind of activity. The fact situations we have presented clearly show the question of "who was there first" is rarely open to a clear-cut answer. While the *Breau* case seems to be an exception, the others indicate there were changes in both the neighbourhood and in the intensity and/or type of farming operation. Such changes occurred in gradual steps until the point of "intolerance" was reached by some property owners - the normal "give and take" of living was replaced by a need for more definitive statement on acceptable levels of conduct.

The basic principle enunciated in "right to farm" does not appear to make allowances for this. If we endorse an immunity that, in effect, offers protection from legal liability to a farmer who now raises 100 pigs in a rural residential setting, can he expand his operation to 1,000 pigs with impunity so long as he employs acceptable farming practices? Or does right to farm give him protection from legal liability only so long as his farming operation is kept at its existing level? Can he continue at his present level (or expand) if the neighbourhood is again changed by further residential growth, even if he himself has encouraged such change by promoting addition subdivision and sale of land in small parcels in his neighbourhood?

To provide right-to-farm legislation is to provide a favourable treatment to one form of economic activity to the detriment of others equally at risk under the common law in respect to legal liability for nuisance.

There are numerous instances where liability has been imposed for noise, smell or vibration in situations far removed from farming operations. For example, in *Hatch v. Pye* (1983), 59 N.S.R. (2d) 170, 125 A.P.R. (T.D.) wood smoke from the defendant's chimney blowing into the plaintiff's house ruined household effects and caused sufficient discomfort that the plaintiff was forced to sleep in his automobile on occasion. The plaintiff was awarded damages in the amount of $1,463 to cover the costs of various repairs, together with $1,000 for the inconvenience he suffered over a four-year period, while the defendants were ordered to remedy the situation within three months or face an injunctive order preventing them from continuing to burn wood.

The New Brunswick case of *Cloutier and Clinique Laport Limitee v. Carrefour Assomption Limitee* (1984) 55 N.B.R. (2d) 114 (N.B.Q.B) provides a fine illustration of the tort of nuisance in the tourism sector. The plaintiff was a residential property owner, living in her home for more than one-quarter of a century. An adjacent house was demolished to make way for a commercial complex containing a hotel, restaurants, a shopping centre and offices with the service facilities for this complex located next to the plaintiff's property. As a result, drizzle from the cooling towers ruined the plaintiff's garden. Noise caused by garbage trucks, delivery vehicles, ventilators and other machinery; odours from garbage and frying foods; and the unaesthetic appearance of garbage containers were among the complaints the plaintiff alleged were reducing the enjoyment of her property. The Court of Queen's Bench issued a detailed list of injunctive orders to alleviate these complaints - orders that required the relocation of certain servicing components of the complex and regulated the hours during which commercial vehicles could utilize the property - and awarded the plaintiff damages in the amount of $8,000.

Right-to-farm legislation would create a number of anomalies. Suppose, for example, a farming operation is located in a rural area with little residential density. One farmer sells his land and the new owner installs a tourist or recreational attraction, such as a track for automobile racing. The attraction increases its business over the years and grows to the point where there are noisy events with large crowds almost every night for several months of the year. Meanwhile the adjacent farm begins to alter and expand its operations. When the farmer decides to alter his livestock base to one that emphasizes pigs by the construction of a large-scale piggery, a clash between property owners is almost a foregone conclusion. Should the law permit the farmer to assert a right to farm so that the adjacent owner can do nothing about the odors from the piggery while, at the same time, it allows the farmer to obtain an injunction and damages against the owner of the tourist attraction because the noise at night has interfered with the comfort and enjoyment of the farm property?

The dilemma involved is most graphically illustrated in the Cavendish situation. "An Offical Plan for the Comprehensive Development of the Cavendish Planning Area", prepared in 1989 by Coopers & Lybrand, stated at page 4:

> Many individuals associated with the agricultural community indicate a need for some form of "right-to-farm" legislation. There is a need to protect existing farm operations from encroachment and possible opposition from tourism developments. The traditional method of zoning land as agricultural is not satisfactory. The agricultural community has also indicated that the opportunities to change the use of the land from agriculture to tourism development must be guaranteed.

We are of the belief that right-to-farm legislation in the absence of land use controls can be a recipe for major community conflicts. To hypothesize a "worst case" scenario, we invite consideration of the public outcry if an agricultural producer constructed a piggery for several thousand animals in the North Shore area. Without right-to-farm legislation, remedial action in the courts is avaiable for tourism operators, recreational property owners and other residents. Without right-to-farm legislation, there is a common law deterrent to such a land use proposal. But, for anyone who is naive enough to feel that no one would undertake such a project in the face of other land usages in the area, we suggest they consider the fact situation presented in *Breau v. Soucy,* where a piggery with 4,000 pigs was constructed not far from 75 summer cottages in New Brunswick!

A review of the disputes that have resulted in court action demonstrates a number of practical factors beyond the generalities of the principles being thrown around in this debate. It seems apparent that the courts are not willing to find a nuisance has been created where there are occasional problems with noise and/or odors. The difficulties must be such that they persist again and again over an extended period of time and constitute considerable disruption in the lifestyle of those who are complaining to the judicial system. Moreover, the financial effects are not as one-sided as proponents of "right to farm" would argue. It is true that the effects of such a lawsuit may result in costs to the farmer-operator so substantial that the farming operation is placed in bankruptcy. But the level of damages awarded to individual plaintiffs are so low that there is no monetary incentive to undertake such an action. In the absence of a large number of plaintiffs willing to share the expenses of the legal fees required to bring the matter to trial, very likely the plaintiff(s) in such a case would be left "out-of-pocket" even in the face of a legal "victory".

In each of the decisions, we are left with the impression that the defendant(s) proceeded with agricultural activities on the assumption that a property owner's right to do on his property as he wished, without regard to his neighbours, was an inviolate right.

A central lesson from the cases is that large-scale livestock operations require a land base of a commensurate scale to ensure that these types of farming operations co-exist with other land uses in the area.

Having raised these concerns, however, we admit to considerable sympathy with the farming community in respect to this issue. But, we are not convinced that right-to-farm legislation can be instituted with equitable consequences unless the immunity from legal liability is tied to a system of permitted land uses. In that way, immunity against suits for damages and applications for injunctions could be provided for producers carrying on farming in areas where intensive agricultural practices are a permitted land use. Whether or not farming practices were being followed would be immaterial in relation to the immunity since the most flagrant violations of farming practices would likely be contrary to other general regulatory measures (environmental or health laws, for example). In areas where permitted uses included more modified agricultural practices, the immunity would be available so long as the use was a permitted one. This would enable smaller producers to enjoy the benefits of an immunity but changes to their operation without expanding their land base and/or without changes to the land use rules for the area would endanger or nullify the immunity. Or, in some areas the immunity may be applicable for certain types of agricultural operations but not others.

Producers in the agricultural zones in Quebec enjoy such an immunity, although the information we have obtained suggests only the one-to-one application of immunity to agricultural zones. This is feasible in Quebec where the agricultural zones extend over large areas. Land use patterns in P.E.I. would render it difficult to have exclusive agricultural use zones in certain areas where there are already "mixed neighbourhoods" in existence amidst the farms in the area.

We have not explored this issue for models in other jurisdictions to the extent we feel would be feasible before urging the introduction of appropriate legislation but we recommend the province do so with some despatch.

Accordingly, we recommend

- **THAT the right to farm principle be adopted as part of a comprehensive land use policy.**
- **THAT the province obtain further information on right-to-farm legislation used in other jurisdictions with a view towards implementing immunity from legal liability and injunctive relief remedies in private nuisance law suits involving noise and odor complaints for agricultural producers carrying on farming operations in conformity with permitted land use provisions.**

Chapter 5

LAND OWNERSHIP VERSUS LAND USE

We have noted, in our historical review, the evolution over the years in what might be termed the "land ownership versus land use" theme. The controversy embroiled in the Land Question centered on land ownership. The land was being used essentially for the purposes that Islanders wished; their concern was centered on their inability to obtain ownership of the land. Only where absentee landowners had allowed their land to remain vacant could it be said that the use of land entered the debate.

Once the Land Question was settled, land ownership receded as an issue and land use considerations began to emerge. At first, as we have noted, land use was centered essentially on what might be called "scientific" factors. Soil capacity and suitability were initially the sole determinants of optimum usage. Not until the time of the Comprehensive Development Plan were the physical science components augmented by socio-economic data in examining land use issues.

The *Report of the Royal Commission on Land Ownership and Land Use* in 1973 grappled with the issue of land ownership versus land use at pp. 38-41:

> Although the struggle to wrest individual land title from absentee proprietors continued for more than 100 years, it nonetheless united Islanders in a common cause, and developed a deep and abiding attachment to the Island community and to the concept of individual land title.
>
> ....
>
> But perhaps most at stake, with the arrival of nonresident land owners in this special Island landscape, are those rights and expectations which are unwritten but which at least until very recently have been very clearly understood by all members of the rural community. While the community has promoted and respected the independence and pride of individual landholders, it has also looked askance at those whose buildings went uncared for, or who husbanded land poorly. A community right of access was also well understood, and problems of trespass were practically unknown. One was not expected to ask permission to walk over the property of others to reach the trout stream or the beach, for it was understood that one would show respect to livestock and planed crops, that one would not cut fences, and that one would close the gates behind one.
>
> The Commission realizes that Island landscape and community with its unwritten attitudes, rights and expectations cannot be frozen in time. At the same time it feels that every reasonable effort should be made to respect and support them wherever possible in the special Island circumstance. For it is these very qualities which make the Island increasingly special in a larger world where such qualities become increasingly rare.

MINIMUM MAINTENANCE

> The most repetitious theme throughout the public hearings was the importance of land use as opposed to land ownership. The belief that who the owner is, is not so important as what use is made of the land is intellectually, morally and otherwise appealing. Nonetheless, the characteristics of both the owner and ownership (i.e. conditions of tenure) are important because both may affect land use. The public has indicated their understanding of this, and they have also indicated their priorities:
>
> (1) land use;
> (2) land tenure (conditions);
> (3) land owner - (a) non-resident;
>   (b) corporate.
>
> The over-riding concern with land use was articulated in terms of such tangible problems as allowing properties to grow up in weeds and bushes in the midst of adjoiners' cultivated fields, the growing number of No-Trespassing signs, and non-maintenance of fences. Similar charges were laid against the holdings of the provincial Land Development Corporation. In both instances the concern was expressed in terms of both the nuisance value and the unsightly impact on the Island landscape.

The Royal Commission of 1973 felt that the imposition of land use standards, which it called minimum maintenance requirements, would be the answer and, except for special rules regarding corporate ownership, the restrictions on non-resident land ownership should be eliminated. Recommendations 18, 20 and 21 in the 1973 Report focused on these solutions:

> 18. A minimum maintenance requirement should be placed on the landholdings of the Land Development Corporation, corporations, alien non-residents, other non-residents, and nonoccupiers (whether residents or not).
>
> 20. *A limitation of 200 acres should be placed on the landholdings of all corporations - held directly or indirectly without the consent of the Lieutenant-Governor-in-Council.*
>
> 21. *With the exception of corporations and partnerships, the present acreage and shore frontage restrictions on non-resident land purchases be removed at such time as:*
>
> - *an enforceable coastal land use plan has been prepared, accompanied by improved subdivision requirements,* as recommended . . .
> - a minimum maintenance requirement has been introduced, as recommended .
> - the necessary legal machinery has been enacted to enable a large degree of community participation, as recommended . . . . [These are recommendations calling for community participation in decisions affecting land use and encouragement of more detailed planning at the local level.]

The thrust of the Report of the Royal Commission on Land Ownership and Land Use effectively negated land ownership as a component in land issues. While some of the recommendations might now be said to be "partially implemented", this occurred more through the evolution of time and other processes rather than any directed endeavour to implement these recommendations.

We are of the view that land ownership can not be dismissed so lightly as the Royal Commission of 1973 appeared to do.

Our discussion on Soil Erosion and Degradation includes evidence to suggest the interactions between land ownership and land use have profound effects on land stewardship.

Who owns land can change the socio-economic fabric of a neighbourhood, community, or region without ever altering or detracting from land use. Indeed, the land use may be enhanced: the worth of the land may be increased or the land itself may be better maintained. But at what price?

Examples of this elementary observation abound, commencing with our historical Land Question.

Consider the scenario at the most individualistic of levels: the single property owner who, for years, has enjoyed an amicable relationship with his or her neighbour. The neighbour's property is sold and the new landowner proves to be a hostile, unwelcome intruder into the otherwise congenial neighbourhood. Nothing has changed in terms of land use: the property continues to be one used as a residence. It may even be better maintained than in past years. But the change in land ownership begins what may prove to be a chain of other reactions that alters the entire socio-economic mix in the neighbourhood.

A number of ownership changes can quickly alter the fabric of a community, even though there are few (if any) land use changes. The transfer of a number of residential properties from small households occupied by senior citizens to families with children can alter school bus routes, school personnel and facility requirements, demands for senior housing in institutional settings, recreational needs and a host of other variables that may, in turn, affect land use in the area.

While these examples are part of the recognized change that goes on constantly, other land ownership issues arise when more novel trends occur.

Where land becomes owned in quantity - either in terms of the size of the land acreage or the number of owners concentrated in an area - ownership issues surface that may prove to be as contentious and divisive as the controversies that focus on land use changes.

Examples of these in other jurisdictions abound, often centered on the ownership of land in an area by a group of landowners with a particular set of beliefs at variance with the local community. The arrival of numerous members of a particular religious group or a cult, for instance, may produce volatile reactions among local residents. In some situations, this response is regarded, particularly by those outside the community, as little more than intolerance, even bigotry. Other circumstances may yield more justifiable concerns. But the point is clear: land ownership cannot be dismissed as inconsequential.

Prince Edward Island has been spared much of the strife that has surfaced elsewhere in this type of land ownership issue. Is it only a matter of time before the next Jim Jones leads his followers to the promised land on a vacant farm in Kings County? Or a Mafia King-pin (or Columbia drug lord) snatches up a few prime acres of shorefront recreational property for his "retirement"? Can government "do" anything now to prevent this type of controversy from arising? Or, when it comes, will residents defend the right of the land owner to sell the land to the highest bidder so long as its "use" is compatible with the soil conditions and other environmental variables?

While we have yet to encounter this type of scenario, we do have other "ownership" issues - some are with us now, others loom on the horizon.

The latest in a long series of laws governing land ownership in the Province can be found in the *Prince Edward Island Lands Protection Act*, R.S.P.E.I. 1988, cap. L-5. Unlike other land ownership laws, this one affects all land holdings in the Province (with the exception of land within municipalities).

Originally enacted in 1982, the *Lands Protection Act* (as we shall refer to it) limits the amount of land that may be owned by individual owners in the Province. Individuals are limited to a maximum of 1,000 acres: corporations (which, from a legal standpoint are "non-natural persons") are limited to 3,000. Through somewhat complex definitions for terms such as "aggregate land holdings", there is, in effect, a formula for determining how total acreage is to be computed where a property owner has a portfolio that includes both title to land in his or her individual capacity and an interest in land through the ownership of shares in a corporation that has title to land. There are provisions enabling a person or a corporation to obtain a "special permit" to exceed the allowable limit, and special permits have been issued since the legislation was enacted almost a decade ago.

Should there be continued limits on the amount of land that may be owned by a single individual or corporation? If so, what should these limits be? Those were two of the basic questions facing us when we examined this issue.

The opinions expressed to us in the course of our public hearings covered a wide and variable spectrum. At one extreme, we heard a presentation calling for an end to government intervention in this regard. The opposite end of the range was represented by those calling for reductions in the maximum acreages, particularly with respect to corporate owners engaged in both food production and processing. Significantly, the call for total repeal of lands protection measures of this type did not come from a member of any sector directly affected by the existing measures and the proponent admitted to us his views stemmed from his personal ideology on the proper role of government and not from effects the legislation might be creating. Equally significant was an apparent widespread satisfaction with the intent of the present law and the quantities of land that are specified in the measures. There were, however, two presentations that called for quantitative changes in the limits imposed under the *Lands Protection Act*: Cavendish Farms called for an increase in the allowable limit for corporate holdings, while the National Farmers' Union sought a reduction.

It is no secret that the acquisition of lands by Cavendish Farms is one of the most central issues surrounding both the introduction and retention of the *Lands Protection Act*. This issue has numerous facets, one of which is the question of the vertical integration of a corporate structure in the food chain. Members of the agriculture community in numerous jurisdictions have expressed concern and, frequently, opposition to the concept of a food processing organization that is involved in production of product before it leaves the farm gate. Such a structure, in terms of their concerns, replaces farmers with corporate employees who, although often engaged in the same skills and practices as farmers, have lost the independence and entrepreneurship associated with owning a farm of their own. Simultaneously, those who have retained farming operations of their own are squeezed from a marketplace no longer composed of many players with comparatively equal means of participating to one where a single, major player can dominate or manipulate the marketplace to its own ends and vested interests.

The second facet of this issue - and one which renders the Cavendish Farms scenario all the more difficult - is that the corporation involved in food processing is not simply engaged in vertical integration but is an integral part of a corporate network with many horizontal integration features. While the same may be said of many large food-processing firms, the ties of Cavendish Farms with various Irving companies enhances the concerns of those who oppose vertical integration in the farming sector.

Put bluntly - as was the succinct way the point was made to us in one presentation - *the Province should be concerned about the extent to which it could be controlled by a corporate empire whose fiscal muscle is many times in excess of the Province itself.*

There are, as well, a number of dimensions to this issue which we feel must be weighed into the equation.

The National Farmers' Union argued that the size of allowable land holdings should be reduced so that corporate farms engaged in food processing should be allowed to own only sufficient land for plant operations and test plots of some 50 acres. Their perspective was put forward in their presentation in these terms:

> Over sixteen years have passed since we warned the Royal Commission on Land Ownership and Land Use as we warn this Royal Commission on the Land of the danger of corporate ownership and vertical integration in farming. We believe that the greatest threat to the family farm and to rural communities is the encroachment into the field of food production by industrial corporations, and other off-farm interests. Still more damaging is when such corporations operate under public incentive or assistance programs at the taxpayers' expense. It is generally concluded that the most acceptable and efficient form of production for farm commodities is the family farm unit. The National Farmers Union has always said "Let the farmers do the farming and the processors do the processing". Vertical integration takes place when the industrial corporations grow the product and process it as well,

> thereby placing themselves in a premium position by being directly accessible to the market place and driving up prices for leased or owned land in competition with the farmers. Production controlled by the large industrial corporations conflicts with the goals of the farm community as related to decision-making and control of the management of their own farms. The National Farmers Union believes that the *basic right to produce and share the available market for farm commodities should, insofar as possible, be available to all farmers. In this respect, we object to the free entry into production of farm commodities by corporate integrators whose primary interest does not lie in the income from its production itself but the use of production as a means of acquiring products for processing and marketing as a manufactured food product.* The implications to market prices are self evident in such cases. We emphasize that *Governments* at every level should regulate to prevent the take-over and control of the means of food production, processing or marketing at any level by industrial corporations. *We recommend that the P.E.I. Members of the Legislature construct and pass anti-corporate farming legislation, prohibiting industrial corporations from engaging in the primary production of food as part of a vertically integrated operation and that they be confined to an upper limit of fifty (50) acres for test plot purposes.* Land must be treated as a resource, not a commodity. [Emphasis original.]

It is neither appropriate nor practical to distinguish between "industrial corporations" and other corporate entities. Today there are numerous farming operations which are incorporated, often for valid, even compelling reasons relating to such factors as the limited liability advantage offered by corporate status, income tax measures or other financial impingements that affect the farming operation, proportionate involvements by various participants in the operation and so forth. When does such a corporation become an "industrial corporation"? Does grading or packaging the product constitute an "industrial" activity? If adding value to the raw product constitutes the "industrial" component, where is the line drawn? Can a strawberry grower who makes jam for re-sale at the Farmers' Market be told his land holdings must be limited to a small size for test plot purposes because he is involved in vertical integration? If we are not prepared to apply that standard to the strawberry grower - and we are not - then we are not prepared to apply the standard to Cavendish Farms, merely because they deal in a bigger volume and scale of production. It is only fair, reasonable and practical that whatever set of rules are imposed on corporate land holders should be imposed equally on all corporate land holders, regardless of what mix of "industrial" components are involved in their corporate activities.

From another part of the spectrum of opinion on the *Lands Protection Act* and the restrictions it imposes on the size of land holdings, we heard from Cavendish Farms. Their presentation was made to us on June 1, 1989, long before Cavendish Farms announced its intention to build a second plant in the Province. Subsequently, the announcement by Cavendish Farms was followed by an announcement from McCains Foods of Florenceville, New Brunswick, to the effect that it, too, was contemplating a potato processing plant. More recently, there have been concerns as to whether the second Cavendish Farms plant will proceed and indications are the New Annan plant will be enlarged in lieu of a new plant. While these current developments are unfolding apace with our deliberations, we are of the view they should not interfere with our perception of the future evolution of the *Lands Protection Act*.

The role of Cavendish Farms in the potato industry was explored by the Royal Commission on the Potato Industry, which reported to Government in November 1987. Portions from that Report, drawn from pp. 189-199, serve to put the matter into proper perspective in relation to the potato industry in particular and, more generally, both the entire agriculture sector and the provincial economy.

> The potato processing sector represents an important and growing component of the Island potato industry. Its importance is reflected not only in the amount of potatoes used (approximately 15 per cent of Island potatoes produced), but also in the fact that it adds a measure of price stability to an industry notorious for its boom and bust price cycles. Moreover, potato processing is of major economic benefit to the province, providing much-needed employment and economic spin-offs well beyond the farmgate. For instance, Cavendish Farms represents the largest private sector employer in the province, employing approximately 500 people all year round. The company estimates that it contributes $26 million to the economy of Prince Edward Island in wages, salaries, and the purchase of supplies, including potatoes.
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> Cavendish Farms, which produces french-fries and other processed potato products such as hash browns and prime cuts, is by far the largest player in the processing sector of the province. It contracts potatoes from approximately 75 growers, most of whom are located within 30 miles of the plant at New Annan. . . .
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> There are two major potato varieties used in the making of potato products at the Cavendish Farms plant: Shepody and Russett Burbank. Shepody is an early variety which is processed at the plant in the late summer and early fall, until the late-maturing Russett Burbank comes on stream. The Russett Burbank takes over from the Shepody in the fall and remains the mainstay of processing throughout the remainder of the year. The adoption in the past decade of the Russett Burbank for processing at the plant, is a major factor in the phenomenal increase in production of this variety in the 1980s.
>
> Besides requiring specific varieties, french-fry processors prefer larger potatoes to yield a longer finished product. In addition, the processor prefers maximum solid content as measured by specific gravity. The combination of these factors means that the producer must tailor production practices to meet requirements. The colour of the potato when fried is also important and is dependent on sugar content, which can be kept at desirable levels by storing potatoes at temperatures above 46 - 47 degrees Fahrenheit. These factors differentiate the process growers from seed and tablestock growers. Normally, seed and tablestock growers will store their product at much colder temperatures. The seed grower also attempts to keep the potato size small and uniform. The differing requirements for the processing sector and the need for a secure supply of potatoes encourage the processor, Cavendish Farms, to contract with growers for raw product.
>
> Cavendish Farms grows approximately 20 per cent of its own requirements (generally about 2,000 acres). In the past, this in itself has been a source of some controversy: however, the firm justifies it because of the need for security of supply, particularly during the summer months. In the Commission's view, this is a reasonable contention. The remainder of Cavendish Farms potato requirements are met through contracting and some purchases on the open market. It is reported that the firm contracts approximately 80 per cent of its remaining requirements. . . .

The contract between Cavendish Farms and the process growers is negotiated between the management of Cavendish Farms and a bargaining unit of the Prince Edward Island Potato Processing Council, a committee of the Board. This negotiation process is necessary, given the near monopoly Cavendish Farms has over processed potatoes in the province. The bargaining unit from the Processing Council usually consists of three to five people. The negotiating units from Cavendish Farms and the Processing Council meet usually in April to negotiate the contract for the upcoming year. As the month of May approaches, pressure begins to mount to reach an agreement. The Processing Council is under pressure to conclude a contract prior to planting. The processor, Cavendish Farms, is also under some pressure because it wants to have farmers under contract to meet its requirements for the following year. If contract negotiations fail, the processor cannot contract with growers until 15 August of that year, which makes it difficult for the processor to be sure of supply. In the Commission's view, the current bargaining process appears to be balanced and both parties seem to have enough pressures upon them to reach an agreement.

The contract negotiated includes such items as price at, or between, different delivery dates; size specifications for potatoes on loads delivered; quality specifications for potatoes delivered; and an array of other stipulations. Once the contract is negotiated, it is subject to a ratification vote by the process growers who had a contract [*sic*] in the previous year. After ratification, Cavendish Farms is permitted to enter into individual contracts with growers for a certain volume at specified delivery dates.

At the Commission's public hearings, Cavendish Farms indicated a desire to have the Prince Edward Island Potato Processing Council ratify an agreement without going to the growers for a vote. It was argued that such a requirement slows the process and that the majority of those voting are not prone to the "give and take" of negotiations. While this argument has some merit, the Commission feels that the process should not be changed. First, it would be unfair to the process growers, as they would not have a say in an agreement which profoundly affects their livelihood. Second, it would be unfair to the negotiators for the Processing Council; inevitably, on some contracts, they could easily be accused of capitulating to the processor, a burden which may not be easily shaken within the potato community. It is doubtful many process growers on a negotiating team would want to carry total responsibility.

While the negotiating procedure in the processing sector appears to work well, it should not be presumed that improvements are unnecessary to help ensure the protection of producer interests. The Commission has identified two areas which warrant discussion. The first is the issue of grading practices at the plant in New Annan. The second surrounds the issue of openmarket purchasing by the processor. These two items are not necessarily mutually exclusive.

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The issue of open-market purchases by the processor is also a matter of concern. As mentioned earlier, Cavendish Farms purchases the bulk of its potato requirements under contract, but a portion of its requirements are purchased on the open market. The firm argues that this is necessary because, in the event of depressed prices, it could be placed in a noncompetitive situation if it did not have the flexibility to buy some product on the open market. Processors in New Brunswick have the same flexibility, while those in Ontario do not. Running somewhat counter to this notion of flexibility is the argument put forth by the processor that specifications for processing potatoes are important. If the specifications for process potatoes are so crucial, the processor would not want to jeopardize the quality of the finished product by purchasing on the open market. However, given that the major competitors for the Island's processing sector are in New Brunswick, competing for the same market, it would appear that steps to limit open-market purchases would not be feasible unless McCain Foods had to abide by a similar arrangement. If Cavendish Farms had to purchase all its requirements at the contract price, and McCains did not, then the Island processor could be placed at a competitive disadvantage.

The Commission would be remiss if it did not emphasize the importance to the industry of Cavendish Farms. The company represents a major institution in the province, as both an employer and the centrepiece of foodprocessing. It has been a success story in a province all too familiar with its share of failures. Like all major successful institutions, Cavendish Farms has come under public scrutiny in the past, and will probably continue to do so.

Cavendish Farms has brought a measure of financial stability to the processing sector in the province, which is particularly important as it brings more stable prices to the potato industry as a whole, and in particular to those farmers who produce for the New Annan plant. No doubt this financial stability has been brought about by the capital backing of the Irving interests, accompanied by an aggressive marketing approach practised by the firm itself. Since its arrival in the province in 1980, it has expanded production, and hence its requirements for raw product. In 1981 the amount of potatoes directed to local use for seed and processing was approximately 2.6 million cwt., compared to approximately 3.9 million cwt. in 1985. This represents a 50 per cent increase which in large part must be attributed to processing. The increased use of potatoes has been achieved through Cavendish Farms' expansion of production and marketing. Its remarkable increase in marketing is reflected in the Island's international exports of frozen potato products. Between 1980 and 1984, international exports of frozen potato products from the Island increased from $2.8 million to $11.3 million. Much of this increase was derived from exports of frozen potatoes to the United States which in 1980 were valued at $1.6 million as compared to approximately $7.8 million in 1984. Thus there can be no doubt that the processing sector has experienced growth in the 1980s.

There appears to be on-going confidence on the part of Cavendish Farms that the processing sector will continue to grow in the province.

Somewhat concurrent with the tenure of the Royal Commission on the Potato Industry was litigation involving the *Lands Protection Act*. The decision of the Prince Edward Island Supreme Court *en banco* in *In the Matter of the Lands Protection Act, R.S.P.E.I. 1974, c.L.7.1 and In the Matter of the Judicature Act, R.S.P.E.I. 1974, c.J-3 and In the Matter of a Reference by the Lieutenant Governor in Council as Contained in Order Number EC562/86 and Irving Pulp and Paper Limited* (1987), 64 Nfld. & P.E.I.R. and 197 (A.P.R.) 249 (P.E.I.C.A) (sub-nom. *Reference Re Lands Protection Act* (P.E.I.)) was rendered on July 24, 1987.

In this case, the Lieutenant-Governor-in-Council for the Province referred four questions to the Supreme Court en banco for its consideration. These questions were as follows:

1. Does the interest of a lessee of land fall within the definition of 'land holding' under the Prince Edward Island *Lands Protection Act,* R.S.P.E.I. 1974, Cap. L-7.1?
2. Does the interest of a lessor of land fall within the definition of 'land holding' under the Prince Edward Island *Lands Protection Act*?
3. Do the provisions of the Prince Edward Island *Lands Protection Act* infringe the rights to liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice guaranteed by section 7 of the *Canadian Charter of Rights and Freedoms (Constitution Act 1982)?*
4. Are the provisions of the Prince Edward Island *Lands Protection Act* inconsistent with the right to pursue the gaining of livelihood conferred by clause 6(2)(b) of the *Canadian Charter of Rights and Freedoms?*

The court held that question one should be answered in the affirmative while the remainder of the questions should be answered in the negative.

In addition to the Attorney General of Prince Edward Island, Irving Pulp and Paper, doing business under the firm name and style of "Cavendish Farms", appeared before the court as an Intervenor. Its interest was described by the court at p. 253 of the judgement:

> To provide the proper crop rotation which good land husbandry requires, Cavendish Farms holds, and has always held, the position that it requires to have, either in freehold or in leasehold, significantly more than the three thousand acres which a strict interpretation of the law would appear to permit. This would be, in its purview, particularly relevant if it were required to include in its "land holding" figures all acreage which it might lease to others in which theses lessees might plant, for their own purposes, crops other than potatoes on a crop rotational basis.

The effect of this decision is to nullify the intention of the *Lands Protection Act*. When the court answered the first question in the affirmative, it meant that a tenant was held to the specified limit in the legislation. The farmer who owned, in his own name, 600 acres and wanted to lease more land would legally be limited to leasing a maximum of 400 acres. On the other hand, the land owner who owned 1,000 acres and who leased all of this land to someone else would have an aggregate "land holding" under the Act of zero acres. Such a land owner could then lease other lands which would be taken into the aggregate in computing the land holdings. (However, it is only those leases for a term in excess of three years which must be in writing and registered with the registrar of deeds, pursuant to the *Lands Protection Act.*) Accordingly, it is possible to have the use and/or control of a quantity of land far in excess of the limits prescribed by the *Lands Protection Act* because of the Court's interpretation of the legislation and the loopholes it contains.

The decision of the Court in *Re Lands Protection Act* also touched on the relationship between the legislation and the Canadian Charter of Rights and Freedoms. While two of the three judges wrote decisions on these questions, it was clear from their commentary that they were not extending their negative answers to the Charter questions sufficiently far to preclude other potential Charter challenges to the *Lands Protection Act*. Mitchell, J., for example, expressed the view that Section 7 of the Charter does contain "a limited right to acquire property in certain circumstances". (64 Nfld. & P.E.I.R. 261) He elaborated further, at p. 262, in this passage:

> The whole notion of "security of the person" surely includes provision for at least what is necessary to support physical integrity. Whatever the outer limits of the concept of "security of the person" may be, it must at least involve having adequate food and shelter for physical survival. Both those basic needs may require the acquisition of some property for their satisfaction. When that is so, the right to acquire the necessary property is guaranteed as part of the right to security of the person and that right can only be taken away in a manner that accords with the principles of fundamental justice. Thus in this sense, s. 7 includes a right for everyone to acquire such property, including land, as becomes necessary in order for them to enjoy in full measure the guaranteed right to security of the person.
>
> When I consider the *Lands Protection Act* I am unable to conclude that it infringes that right. The Act does not provide an absolute bar to land acquisition in the province for anyone. Before a limitation on the acquisition of land becomes subject to the constitutional guarantee of fundamental justice in s. 7, it must be so restrictive that it prevents someone from obtaining something essential to their physical or psychological well being. There is no evidence before the court from which to conclude that the statute in question presently has either that purpose or effect with respect to anyone. Accordingly, I, too, would answer question 3 in the negative.

It is against this background that Cavendish Farms appeared before the Royal Commission and requested that we advocate an increase in the allowable acreage limits under the *Lands Protection Act*.

The Cavendish Farms presentation provided us with information on the expansion it had undergone since the *Report of the Royal Commission on the Potato Industry* had been prepared.

> Cavendish Farms is a frozen food company situated at New Annan in the middle of the prime agricultural area of P.E.I. The main purpose of the company is to process potatoes into french fries and formed products and to process peas; both products for the retail and food service markets. In 1980 the Cavendish Farms name came into existence and since then has expanded its sales threefold. In the early years, the plant produced french fries during the fall, winter and spring only and shut down each summer because of poor quality raw product. Over the past nine years we have increased production by running the plant twelve months a year thus supplying our 550 employees with close to year-round employment. Over the past nine years sales have tripled in Canada and U.S. and we are now exporting product to the Caribbean, Far East and Japan.

This growth has taken employment for a seasonal basis to a year-round basis, has increased our purchase of potatoes from local growers by some 175 million pounds and injects approximately $34 million annually into the local economy. The spin-off effects from these dollars are tremendous in terms of growth of other area businesses and in terms of other area employment. We believe it is businesses such as ours with a high level of value added to a raw material produced in this province that can be most beneficial to all associated with it. At the same time all of this is put at risk if we cannot supply our customers with a quality product 12 months per year; and we can only provide this quality product if we have quality raw material 12 months per year. Current land legislation places having a quality year-round supply of raw material at risk. We will try and develop for this Commission an understanding of this risk and what must be done to minimize it.

Associated with this processing plant, Cavendish Farms has, like most processors, an Agricultural Division which grows a portion of the plant's requirements for production in the summer and early fall. The Farm Department over the past nine years has expanded its acreage from 1300 in 1980 to its present level of 2000. In the peak seasons, planting and harvesting, the farm employs up to 60 men and women. During the summer growing season that number decreases to 30 people. Most of these people have been employed with the Field Dept. for a number of years and come back year after year.

We grow two varieties of potatoes; 800 acres of Shepody and 1200 acres of Russet Burbank. 400 acres of Shepody are harvested in late August and early September to be run through the plant for fries while the balance of the Shepody and Russets are dug starting September 20 to be stored in the long term storage building owned by Island Holdings Ltd., a related Company, for the next summer's plant production. If the plant requires new crop potatoes in August, most farmers do not want to dig their crop at this time as the yield has not met its maximum potential. In order to get raw product for the plant, the Farm Dept. will start up the diggers and sacrifice yields to keep the plant running. Whenever the farm's Shepody are processed, the contract growers start delivering their Shepodies direct from their fields.

As was mentioned earlier, Island Holdings owns a large potato warehouse situated at the plant which is used to store raw product for processing during the summer months. This warehouse, the largest in North America and probably the world, is capable of storing 80 million pounds of potatoes for at least eleven months. This is a concrete structure with "through the pile" ventilation and refrigeration to keep the product cool during the summer months. Without this building, production during the summer months would be impossible thus jeopardizing the economic existence of Cavendish Farms. This warehouse is 350 feet wide and 375 feet long consisting of six bins. Four bins have a capacity of 50 million pounds and two new bins constructed in 1988 have a capacity of an additional 30 million pounds.

The Farm Department has the responsibility of supplying 50 million pounds of potatoes to Island Holdings Ltd. with the balance contracted with growers. As you can appreciated, storing 80 million pounds of potatoes from September of one year to August of the next year is a very risky business. The maturity and quality must be excellent in every load delivered. When the farm department delivers the potatoes, we know they have been monitored for insects, blight, wet spots and frost. We are very careful of the temperature we dig at. If the ground or air temperature drops below 41 degrees F, we will not dig the potatoes. When standards have been met on all of these items, we know it is possible to store the potatoes for eleven months.

In order to have a building of this size filled before freeze-up, we must start to fill it by September 20. This means Russets are being harvested before their maximum yield has been attained. As a Company, we would prefer to have smaller potatoes and less yield than have frozen product go into the Island Holdings warehouse as we know frozen potatoes will jeopardize our entire long term storage. Most growers do not want to start harvesting their Russets at this date because of yield loss so we have decided to dig our own first and then let the grower start later. If the Company did not grow any potatoes, it would be impossible to have the warehouse full of frost free potatoes thus stopping production during the summer period.

During four weeks in the summer Cavendish Farms processes 2000 acres of peas. The Field Dept. grows approximately 25% of these acres while the balance is contracted with farmers. This legume crop fits in well with the rotation of potatoes, barley and hay. The growers like peas because of the nitrogen fixing nodules on the pea vine root. After the peas are harvested, most farmers sow a cover crop of barley or winter wheat. In order for the Farm Dept. to grow 2000 acres of potatoes and up to 500 acres of peas we would need 8000 acres of farmable land to enable us to rotate properly. As corporate farmers, crop rotation and the prevention of soil erosion are the two highest priorities we have since the value of our assets would be destroyed [*sic*] if our land is not treated property. The land that we now own or lease that is not in potatoes or pea production is traded with or leased to neighbouring farmers who will use it to grow feed for livestock or a cash crop.

Over the past 9 years our rotation has brought up the fertility and organic matter levels on all the land we farm. The neighbouring farmers have realized this fact and always have better crops of barley on the land they trade or rent from us. The preservation of the land is a top priority within the whole company from the owners to the machine operators. A prime example of this is a field that was inherited when the Company was acquired from the previous owners. This field was classified as dead and was thought unable ever to produce a crop again. This field was used as a disposal site for lye peel, caustic material which was disked in each week for a number of years. This disking decreased the organic matter to 1% while the caustic material increased the Ph to 8.5. After 6 years of rotating grain and hay and numerous applications of manure, the Ph had dropped to 6 and the organic matter had risen to 3%. We felt this field was ready for a crop of potatoes and in 1987 we planted Russet Burbank and harvested a [*sic*] crop of 307 cwt/acre.

We do not want to grow all our own potatoes, however, to minimize the risk to our business we must grow in the area of 25% of our requirements. We need sufficient land base if we are to do this properly. To say that all corporate farms should be treated identically does not make economic sense if it puts at risk the largest single buyer of potatoes on P.E.I. We can understand that growers may be concerned about us growing too high a portion of our own potatoes but we cannot understand public concern about us growing sufficient potatoes to supply our plant during periods of time when growers cannot and will not supply us.

> We cannot risk our business beyond normal risk; however, we are being asked to do so if we cannot supply approximately 25% of our needs (13 weeks; June to 1st week of September). To care for our needs in this period of time is impossible if we are limited to the use of only 3000 acres of land. It is our opinion, and indeed our position, that it is entirely reasonable that our acreage limits be tied into those acres needed to properly grow 25% of our needs. As we expand plant production, we would expand our contract purchases as well as our own production on a 75/25 basis. This would minimize the risk of not having raw potatoes when needed and, at the same time, allow our growers to expand their operations.
>
> In closing, we believe co-operation to the mutual benefit of all is possible but this cannot happen if our basic needs are ignored.

In essence, Cavendish Farms maintained they needed to *own* 8,000 acres of land in order to ensure their supply for the summer months. We were not persuaded by their arguments, for a number of reasons.

Cavendish Farms argued that it needed to grow its own Shepody potatoes because "most farmers do not want to dig their crop at this time as the yield has not met its maximum potential" whereas Cavendish Farms was prepared to "sacrifice yields to keep the plant running". Later, during questioning, Scott Smith of Cavendish Farms admitted there was a 2-price system whereby "you pay a little more for early fall potatoes than you do for late fall potatoes." However, he argued that "human nature being what it is, there is still the desire to get full yield. It's not right to dig a crop before it's ready to dig, I guess, is the only thing I can say, whether you are getting more for it or not", he said. Mr. Smith, who spoke on behalf of Cavendish Farms, would have us believe farmers are unwilling to dig early because they are reluctant to sell their product before full maturity. If this were so, the tablestock market would likely be devoid of "new potatoes" in the summer season. We are of the view that the supply of new fall potatoes to the Cavendish Farms plant can be effected through contract growers and a premium price mechanism.

Cavendish Farms argued it needed to grow Russet Burbank potatoes for its storage facilities, that the risks involved in storing potatoes over a ten-month period were great and that these risks could best be minimized if the potatoes were grown by Cavendish Farms. Put in a more negative way, the arguments advanced by Cavendish Farms suggested that only its farm staff could be trusted sufficiently to ensure the quality required for long-term storage.

While we can appreciate the risks inherent in long-term potato storage, particularly where all of the raw product is placed in a single warehouse, we were not convinced that such demands for a quality product cannot be met by contract mechanisms with other growers. There is no reason why process growers under contract to Cavendish Farms to supply product for long-term storage could not, as part of the contract, be subjected to more rigorous standards than those supplying product during the winter months. We understand that, for example, a fish plant supplying product to a discerning buyer may, as part of the contractual specifications, be under the supervision of an employee of the buyer from the time the catch is landed until the order is processed. If Cavendish Farms are concerned about the administration and enforcement of standards, careful on-site supervision by one of their employees during product harvest - or even during more prolonged time periods - could conceivably be a contractual stipulation for growers supplying product for longterm storage.

In other words, we are of the view that the concerns about supply expressed to us by Cavendish Farms can be met through alternatives that have no need for Cavendish Farms to own the land on which the product is grown.

There is, in our opinion, an additional reason why Cavendish Farms is concerned about the certainty of its supply - one which Cavendish Farms did not address in its presentation but which would be of critical importance in the event that Cavendish Farms has the ability to supply all its product requirements until the regular potato harvest is commenced in late September of each year. This reason is linked to the process by which growers in the Province enter into a contractual relationship each year with Cavendish Farms.

Earlier in this chapter, we cited passages from the *Report of the Royal Commission on the Potato Industry*, including a description of the bargaining process that is used to reach a contract between Cavendish Farms and the process growers. The Commissioner found, as we quoted earlier, that "the current bargaining process appears to be balanced and both parties seem to have enough pressures upon them to reach an agreement." If Cavendish Farms is able to assure its summer supply by the ownership of additional lands, such a balance, in our opinion, would be appreciably altered. Very likely, some (perhaps, much) of the incentive to conclude negotiations with the Prince Edward Island Potato Processing Council prior to the planting season would be lost.

For these reasons, we are not prepared to recommend changes to the *Lands Protection Act* in accordance with the request made to us by Cavendish Farms.

Having reached that conclusion, we stepped aside from the positions presented to us at our hearings from the various perspectives to ask once more, should there be continued limits on the amount of land that may be owned by a single individual or corporation? If so, what should these limits be?

In answer to the first question, we felt it was fair, reasonable and in the public interest to impose a limitation. To reach this conclusion, we considered a number of points made by R. Alex Sim in *Land and Community: Crises in Canada's Countryside*, a widely-acclaimed look at Canadian rural life by an eminent sociologist. Included in this publication was a discussion on the report of the 1985 Saskatchewan Task Force on Rural Development where, at pp. 158-9, Sim wrote:

> The report of the Saskatchewan Task Force on Rural Development is a government document. ... The task force was appointed and financed by the government which, unlike many other jurisdictions, can boast a ministry of rural development. The populist tradition is still strong in that province. As a consequence, the report reflects an appreciation of rural development.
>
> ....

> A chapter on farm size reviews the pros and cons of the continuing increase in acreage and capitalization of Saskatchewan farms. There is no recommendation to limit farm size, only a suggestion of the need to assist small and beginning farm operators, as well as those wishing to augment their income by means other than acreage increases. If this is a rebuke to the trend toward larger farms it is a delicate one.
>
> The argument for diversification, when weighed against purely economic values, seems to suggest that the heavy hand of government is needed on the side of diversification. Moreover, such a balancing policy is required in order that long term stability can be achieved and vulnerability to international and even national variables in price and market reduced. Without being explicit, the report seems to suggest that *if ten full-time or part-time farmers, each with an average of 1,000 acres, followed a diversified rather than a single crop programme, they would contribute more to the economic development of the community and the province than one farmer with 10,000 acres who grew only one or two crops for export. If the economic contribution of the 10 farmers is greater, the social contribution can be incalculably greater. Ten families living in a community the year round must contribute more economically and socially than one family that spends the winter in Arizona.* [Emphasis added.]

The points made by Sim suggest that limits on the quantity of land that may be held by a single owner has both economic and social benefits of assistance to many farmers and communities. Limits can ensure that those with nothing but speculative interests in the land are curbed in their acquisitions and that rural communities are strengthened by greater numbers of landowning farm families.

These points are of particular relevance to Prince Edward Island where agriculture is our leading industry and the availability of good agricultural land at an affordable price is an essential component in the vitality of this economy sector. Moreover, the "working landscape" is vital to our tourist industry and the size and health of Island land holdings are an intrinsic element in that landscape. The price of land in the Province, by comparison with many jurisdictions, is low. (For example, at $300/acre, a purchaser can acquire the prescribed limit for an individual - 1,000 acres - at $300,000. This is little more than the average price of a modest home in the City of Toronto. While $300/acre is only a fraction of the price of good farmland in some Prince Edward Island locales, it is not in excess of the price of marginal farmland or wooded land in many parts of the Province.) The economic realities of the 1980's have resulted in endowing sufficient wealth on diverse groups of people who can boast of means to acquire substantial quantities of property in this Province at prices so disproportionate to those in other centres that the purchase price could seem like "loose change".

Without acreage limits, individuals (or corporations) may be tempted to acquire large landholdings for speculative purposes. Controls on use can limit usage but they cannot guarantee the land will not be left idle. During the course of our deliberations, we received an unconfirmed report of an American who, on hearing of the fixed link proposal, showed prompt interest to a resident of the province in buying 10,000 acres! (The prospective purchaser was told, promptly and with pride, according to our informant, that such a possibility was not permitted). While this level of speculation may seem unreal to many Islanders, we must bear in mind that the uneven distribution of prices among land markets in parts of North America means 10,000 acres of Island property can translate into the price of an upscale home or summer cottage in parts of the continent.

Unlimited farm sizes would very likely lead to enhanced pressures for corporate control of agriculture through vertically-integrated operations. Already it is difficult to attract new entrants into farming, for reasons we have already suggested. Those who do enter farming and wish to purchase an ongoing operation face a substantial price tag to acquire a relatively modest operation. Except in the most fortuitous of circumstances, the potential purchaser for a large, ongoing farming operation is likely to be an established producer anxious to expand. However, those in the industry have warned us that the cost of acquiring larger farming operations will be so substantial in the future that only well-endowed corporate interests may be able to afford them unless regulatory controls effectively necessitate some divestment of the total structure at the time of sale.

In the face of these concerns, we are prepared to accept the argument that a limit on acreage is fair, reasonable and in the public interest.

What, then, should that limit be? This is a more difficult question, for it involves a balancing of interests. The lower the quantity allowed, the more the positive features of a limit would seem to be enhanced. If a limit of 1,000 acres means 10 farm families, a limit of 500 acres would mean 20 farm families. If a limit of 1,000 acres confines the appetite of a land speculator, then a limit of 500 acres would curb the speculator even more. While those arguments can be advanced to a point, there comes a time when the balance must be struck so that the limit bears some relationship to the economic realities that fuel the system.

Are the present limits of 1,000 acres for individuals and 3,000 for corporations within that realistic range?

One indicator to be used in formulating the answer to this question is the number of farms in various size categories. Tables 2, 3 and 4 in *Agricultural Statistics 1987/88 Edition*, published by authority of the Prince Edward Island Department of Agriculture, provides a farm classification by size for each of the three counties using census data for 1976, 1981 and 1986. We have utilized portions of this data to formulate Table 1:

Table 1
Farms Classified by Size
1986 Census

	760 - 1,119 acres	1,120 - 1,599 acres	1,600 acres & over
Kings County	13	3	4
Queens County	25	10	11
Prince County	29	7	5
TOTAL	67	20	20

The 67 farms in the size category of 760 - 1,119 acres represented 2.4% of all census farms, while 20 farms corresponded with 0.7% of all farms. Clearly, 3.8% of the census farms of 1986 were either approaching or exceeding the allowable limit established for individual ownership of land under the *Lands Protection Act*. (The census date gives no indication as to whether these farm units were held by individuals or by corporations). The data also shows that the number of farms approaching or exceeding the allowable corporate limit of 3,000 acres would be less than 1% of all farms.

Another indicator to be considered is the acreage of potatoes planted by Island potato farms. The *Report of the Royal Commission on the Prince Edward Island Potato Industry*, using census data for 1981 and 1986, concluded (at p. 103) that "smaller farm units have been giving way to larger farm units". Tables 2G and 2H of that Report show that in 1981 a total of 66 farms planted 250 or more acres of potatoes, while in 1986 there were 70 farms planting 250 acres of more. This is a significant number when we consider that a minimal three year crop rotation would require a land base of 750 acres for proper conservation measures. Even more telling is the statistic that 29,680 acres of potatoes were planted on these 70 farms - an average of 426 acres of potatoes per farm. Again, this points to a land base of nearly 1,300 acres per farm in order to plant a potato acreage with a minimal three-year rotation.

In spite of these statistical indications that the existing acreage limits may be low for some farmers, particularly those in the potato industry, *if* they are practising proper crop rotation, there were no indications from the general public or the industry itself (aside from Cavendish Farms) calling for an increase in the permitted quantum of land holdings.

We have reviewed measures that have been implemented in other jurisdictions. As indicated in Appendix D of Volume II, several Canadian provinces have taken steps aimed at controlling land ownership in the agricultural sector. However, the approach taken has been markedly different from the thrust of the *Lands Protection Act*. The Manitoba *Farmlands Ownership Act*, for example, prohibits non-residents of Manitoba and non-farm corporations from acquiring more than 10 acres of farmland in Manitoba but all residents of Manitoba, whether they farm or not, may purchase an unrestricted amount of farmland in the province. The *Saskatchewan Farm Ownership Act*, which has undergone several changes, restricts the ownership of farmland by non-agricultural corporations and non-residents of the province. The State of North Dakota prohibits all corporations from owning or leasing land used for farming or ranching and from engaging in the business of farming or ranching, except under prescribed conditions. A total ban on any form of corporate farming was replaced in 1981 by measures that allow farmers to incorporate but, to qualify as a farming corporation, there is an extensive number of requirements to be met. A number of these provisions are contained in Section 1006-07 of the *Corporate Farming Law*, which states:

> 10-06-07. *Corporation allowed to engage in the business of farming or ranching - Requirements.* This chapter does not prohibit a domestic corporation from owning real estate and engaging in the business of farming or ranching, if the corporation meets all the requirements of chapters 10-19.2, 10-22, and 10-23 not inconsistent with this chapter. The following requirements also apply:

1. The corporation must not have more than fifteen shareholders.
2. Each shareholder must be related to each of the other shareholders within one of the following degrees of kinship or affinity: parent, son, daughter, stepson, stepdaughter, grandparent, grandson, granddaughter, brother, sister, uncle, aunt, nephew, niece, great-grandparent, greatgrandchild, first cousin, or the spouse of a person so related.
3. Each shareholder must be an individual or one of the following:
    a. A trust for the benefit of an individual or a class of individuals who are related to every shareholder of the corporation within the degrees of kinship or affinity specified in this section.
    b. An estate of a decedent who was related to every shareholder of the corporation within the degrees of kinship or affinity specified in this section.
4. Neither a trust nor an estate may be a shareholder if the beneficiaries of the trust or the estate together with the other shareholders are more than fifteen in number.
5. Each individual who is a shareholder must be a citizen of the United States or a permanent resident alien of the United States.
6. The officers and directors of the corporation must be shareholders who are actively engaged in operating the farm or ranch and at least one of its shareholders must be an individual residing on or operating the farm or ranch.
7. An annual average of at least sixty-five percent of the corporation's gross income over the previous five years, or for each year of its existence, if less than five years, shall have been derived from farming or ranching operations.
8. The corporation's income from nonfarm rent, nonfarm royalties, dividends, interest, and annuities cannot exceed twenty percent of the corporation's gross income.

In view of the public acceptance of the concepts inherent in the *Lands Protection Act*, we are not prepared to recommend that the province adopt replacement legislation more closely modelled on the approach used in these other jurisdictions. However, if the central objective of the *Lands Protection Act* is to prevent vertical integration of agriculture in the province, we would suggest that there is merit in detailed study of these approaches. In the long-term, the administration and enforcement of the *Lands Protection Act* will mean that many agricultural producers will be involved in increased regulatory control as they endeavour to expand their operations or seek to make certain internal restructuring changes in their land tenure arrangements.

In the course of our deliberations as a Commission, we - like most Islanders - have been mindful of the spotlight focused on the Irving interests. Tempting though it was, we have not narrowed our focus to address the Irving problem *per se*, feeling that the maneuverings of the Irvings can best be curbed by a continuing reiteration of government policy, of certain amendments to the *Lands Protection Act* and, in particular, by the implementation of a rigorous administrative regime to enforce the intent and provisions of the Act.

Retention of the *Lands Protection Act* calls for administration and enforcement of the legislation in an active and aggressive fashion. We are of the view that the province has allowed the legislation, in large measure, to police itself. This *laissez-faire* approach is most unfair to those who have sought to abide by the law, only to see others around them carry on in apparent (or perceived) disregard of the legislation.

Successful administration and enforcement of the *Lands Protection Act* require amendments to put more teeth into the legislation. "Landholdings" must be redefined to ensure the term encompasses the interests of both the lessee and the lessor. All leases and land management agreements must be in writing and must be registered, without regard to the term. Fines for violating the *Act* must be increased. All applications for special permits must be publicized. Employees and mortgagors who assist in violations to the *Act* must be included among the parties liable for penalties. Above all else, an active administrative and enforcement program must be instituted, commencing with an investigation of all persons or corporations having a landholding in excess of 750 acres to determine if there are reasonable and probable grounds for enforcement procedures to be undertaken.

Accordingly, we recommend

- **THAT the quantum limits on land ownership, as contained in the *Lands Protection Act*, continue to form part of land policies.**
- **THAT the province commit itself to the active and ongoing administration and enforcement of the *Lands Protection Act*.**
- **THAT the province initiate an immediate and thorough investigation of all persons and corporations having a landholding in excess of 750 acres to determine if there are reasonable and probable grounds to issue orders pursuant to Section 12 of the *Lands Protection Act* and, where such grounds exist, utilize the enforcement procedures contained in the legislation.**
- **THAT the *Lands Protection Act* be amended to ensure that the interests of both the lessee and the lessor fall within the definition of "landholding".**
- **THAT the *Lands Protection Act* be amended to require that all leases and land management agreements must be written and registered to be valid, without limiting the term to any prescribed length of time.**
- **THAT the *Lands Protection Act* be amended to increase fines so that the current prescribed maximum fines are converted to minimum fines.**
- **THAT Section 14 of the *Lands Protection Act* be amended to include employees and mortgagors.**

Chapter 6

ROADS

One of the key components of land ownership, land use and the landscape is roads. Their presence (or absence), location and condition are important elements in any discussion relating to land issues. Standards of maintenance, patterns of usage, and the rules imposed upon users are among the variables that must be taken into account, for these factors are important ingredients in such matters as settlement patterns and resource development.

Island roads have been a central concern for successive provincial governments since Confederation - and that concern was inherited from their colonial predecessors. While there may not be a traditional heritage of provincial responsibility in other responsibilities now under government jurisdiction, by common consensus among Island voters and taxpayers roads are a priorized item on the public agenda.

In 1961, 34.6% of the provincial budget was allocated to "transportation"! A decade later, the dollars spent in this category had almost doubled (from $6.7 million to $12.6 million) but transportation had dropped to 12% of the budget due to major expenditures in health and education.

The decades of the 1960's, 1970's and 1980's were an era of paving in Prince Edward Island. In *Land Utilization in Prince Edward Island, Geographical Memoir 9,* published in 1963, C. W. Raymond, J. B. McClellan and J. A. Rayburn described the early years of this improvement program:

> Transportation
>
> Roads: Probably no other predominantly agricultural section of Canada is served by as dense a network of high-quality paved and gravelled highways as Prince Edward Island. . . . [T]he Island farmer or fisherman is nowhere far from a good road leading directly to a main trade centre. The dense pattern of roads becomes more open only in the marginal agricultural areas of western Prince, interior Kings and central Queens.
>
> At the beginning of 1961 the province had 732 miles of paved highways, including the Trans-Canada Highway linking Borden to Wood Islands. Recent road improvement has been directed towards the stimulation of the tourist industry; under the federal-provincial 'Roads to Resources' program, 214 miles of paved highway were constructed between 1958 and 1961, with an additional 233 miles scheduled for completion by 1965. The purpose of these new roads is to make accessible to the tourist the Island's many miles of beach and scenic seashore.

Just how many roads do we have? That question does not seem to be settled with precision in official government literature.

According to the 1989 Visitor's Guide, the Department of Tourism and Parks claims there are 3,748 km. (2342.5 miles) of paved roads and 1,541 km. (963.12 miles) of unpaved roads. This would mean a total of 5,289 km. (3305.6 miles) of roadways.

The P.E.I. Program and Expenditure Review Commission in 1987 indicated the Department of Transportation and Public Works "looks after approximately 3,800 kilometres of paved road and approximately 1,550 kilometres of unpaved roads" - a total of 5,350 km. of roads. In its annual report for the year ending March 31, 1988, it did not specify any statistics in this regard but indicated that it contracted out snow plowing for 2,240.85 km. and plowed another 2,393.1 km. itself, for a total snow removal along 4,633.95 km. of roadway. It would appear that there is approximately 650 km. of roads which the Department of Transportation and Public Works "looks after" but which do not remain open in winter.

We asked the Department of Transportation and Public Works for statistics on this point and we were advised that the highway system controlled by the Planning Act Regulations presently consists of 413 km. of arterial which is 11% of the paved highway system; 758 km. of collector which is 20% of the paved highway system; and 2,555 km. of the local which is 69% of the paved highway system; and that these figures do not include 680 km. of seasonal and non-essential roads. In total, this would amount to some 4406 km. of roads.

In addition to these roads, there are others: urban roads, federal government roads and private roads are all excluded from provincial government responsibility so these statistics on roads are likely to be low.

Let us put this network of roads into some comparable framework. From tip to tip, Prince Edward Island spans 175 km. (109.3 miles). If we could remove our network of provincial roads and span the Gulf of St. Lawrence between North Point and East Point with existing Island roads, there would be sufficient roadway to link these two extremities 30 times. Adjacent to one another and with a width of 66 feet for each road, our mythical archway over the Province would be more than 1/3 of a mile (1980 feet) in width. To re-create this network in another fashion, if Island roads crossed the provincial land base between North Point and East Point - a somewhat longer distance of 224 km. or 140 miles - there could be 23 strands better than 1/4 of a mile (1518 feet) in width. While such comparisons may encompass too much fantasy to warrant further consideration, they do make a central point: much of our land base is used for roads. In fact, we calculate that more than 41 square miles (in excess of 2%) of the Island is devoted solely to public roads under provincial control. When roads under other controls are taken into account, we would estimate the proportion of the land base dedicated to roadways would likely be in the 3% range.

These figures alone do not reflect the impact of roads on land use, until we include in our consideration the activities inherent in this type of land usage. More than 5,000 km. of roadway means some 10,000 km. of ditches - and that, in turn, spells soil erosion from water run-offs and ground disturbances. Forty-one square miles of roadways means forty-one square miles of land subjected, at repeated intervals for some six months of each year, to more than 20,000 tonnes of salt and 60,000 tonnes of blended winter sand.

Roads are a key component to any land use planning exercise. For example, the condition and placement of roads are crucial determinants of settlement patterns. But the linkages between the transportation system provided by roadways and other aspects of land use planning may not be so apparently recognized. Recent studies have shown that the placement of roads can have an important relationship with the energy consumption of homes; properly located at the outset, roadways in a planned housing development can lower residential energy costs by perhaps as much as 50%!

In the August, 1987, issue of *Plan Canada,* Keith Nicol explored these relationships in his article "Building Orientation and Heating Requirements in Canada". Nicol presented a sampling of some of the conclusions drawn from studies elsewhere in Canada:

> *In Lethbridge, Alberta, Southwell and Lange (1984) found that a modern bungalow facing north used 22 percent more energy than the same dwelling oriented south.* However, due to the present low cost of natural gas this is only a savings of $21.00. In fact, the authors conclude that the most important factors in improving neighbourhood energy efficiency is related to increased densities and a more efficient transportation network. (Southwell and Lange, 1984).
>
> A study of energy efficient subdivision design prepared for Guelph, Ontario concluded that total energy saving varied greatly with the type of building being constructed (Ministry of Housing, 1980b). Clearly a building with equal amounts of glazing on each wall will not be sensitive to orientation. As window area begins to vary significantly from wall to wall, however, orientation effects become more important. *In the Guelph Study, orientation alone was concluded to reduce energy use by up to ten percent depending on initial building design.* [Emphasis added.]

Using computer models to project savings and taking into account cross-Canada weather variables, fuel costs etc., Nicol found the standard building facing east or west used anywhere from 2-27% more energy than a south oriented building. The north-facing dwelling required 7-45% more heat than its south-facing counterpart. He also found that street orientation greatly affects building orientation. "A dominant grid or semi-grid pattern of east-west streets produces a lot type which is most suitable for passively solar heated buildings. This road layout, similar to residential street design prior to 1945 when the now popular pattern of cul-de-sacs and crescents began to be used in Canadian cities, minimizes shading and allows large amounts of south-facing glass to be used", he wrote. Some Canadian municipalities have passed bylaws to protect solar access. Others have bylaws requiring building and street orientation that favour an east-west orientation.

The author pointed out that "it is important to recognize that, long before building design has started, decisions are made which will affect the final orientation of a building". *Decisions on road layout are typically based on factors other than the energy use required by future dwellings constructed along the streets.* Studies show "street layout largely dictates lot orientation which greatly controls building orientation", Nicol concluded.

Such variables as these show that good land use planning not only operates by the coordination of a vast number of considerations but becomes, in effect, a seamless web that takes into account a multiplicity of factors.

Who would have thought that the placement of a road can affect the size of the homeowner's oil bill? Elsewhere in this report, we recommend the province engage a landscape architect/planner. We do so in the context of the landscape, so that those involved in home buying or renovating, as well as developers, would have the benefit of professional advice that would provide public benefit in terms of the landscape. But we also foresee benefits to be gained from professional advice such as this - someone who can suggest the dwelling would be better sited to save energy costs as well as someone who can suggest the street through a subdivision would result in more marketable lots if it were re-oriented.

All too often, roads are seen only in their transportation component. The impact of roads in other land use matters, however, cannot be ignored.

Having said that, let us now turn our attention to the transportation component of roads and its immediate, direct relationship with land use and land ownership.

As part of a transportation system, roads must be designed to meet the requirements of the public who use the highway for personal travel or the movement of goods. Such a network must also operate under various economic and environmental constraints to serve the public in the best manner. From the transportation standpoint, the needs of the public could be considered to encompass a number of highway user goals. These would include: increased mobility, dependability and comfort; reduced accidents, travel time and costs; and enhanced aesthetics.

Increased mobility is desired by the public. In addition, special consideration must be given to increasing the mobility of older citizens, the handicapped, and those who cannot afford to drive or who are incapable of driving to work, to shopping and recreational facilities, or for other purposes. A highway system, able to cope with bad weather and other adverse conditions, is a dependable system. Increased dependability will have a high percentage of on-time arrivals. The comfort of a highway is increased by well-maintained vehicles and by reducing congestion.

A major goal is to reduce fatalities, injuries, and property damage accidents on all highways. Reduced time spent in travel means faster door-to-door transportation for both people and goods. User costs are monies spent for operating costs for private vehicles, fares and operating subsidies for mass transportation systems, and prices for the shipment of goods, including losses and spoilage. Clearly, it is an important goal to keep these costs as low as possible.

Finally, because people spend a significant portion of their time travelling, enhanced aesthetics is an important goal. The travel experience should be kept as pleasant as possible by promoting beautification and the development of scenic facilities along rights-of-way.

While providing a system or roads that meet these goals, the province must include a number of other factors into its decision making.

Costs are a key component and prudent financial policies call for measures that minimize capital, maintenance and/or operating costs. The construction of highways and the purchase of common carrier vehicles for the movement of people and goods are major investments. Once these investments have been made by the construction of new roads, both the costs of maintaining existing facilities and equipment and the operating costs of labour and energy are major components of the total cost of providing public roads.

At the same time, all highways should be planned to work as a system with the various needs interconnected for flexibility - yet providing that efficiency which only specialization can produce. The highway system must be planned so that natural resources, such as prime agricultural lands, forests, shorelands, lakes and wildlife preserves are conserved. Highways should be built and maintained to minimize harmful impacts on the natural environment, wildlife, marine life and plant life. In addition, new highway facilities should avoid sites that have historic and aesthetic value. At the same time, the emission of noise, gaseous and particulate pollutants and solid wastes from highway sources should be kept to a minimum.

Highways are a vital ingredient in promoting economic development. They offer accessibility to all parts of the province. Because highways affect the patterns of development, they can and should be used to promote desired forms of population settlement patterns and the desired location of economic activities.

In order to meet these objectives, a highway system must provide for both traffic movement and land access. *No highway can safely satisfy a high demand for both.* Highway classifications are based on those which serve land users, the local roads; those which serve through traffic, the arterial highways; and those which serve both, the collector highways.

Our present highway system evolved from a system of local roads with no access controls. As our main highways developed, they served the dual purpose of traffic movement and land access. With increasing traffic volumes, vehicle speed and accident rates, the benefit of reducing the conflicts between through and turning traffic were realized.

A general description of highway classification from the *Manual of Geometric Design Standards for Canadian Roads* was used in 1979 as a guideline to designate access along the provincial highway system. These controls were included in the Planning Act Regulations.

The intent of the Regulations in classifying the roadway was to set up the arterial system as a safe, efficient transportation network to carry relatively high speed traffic between the main centres of the Island and the ferry terminals. In order to meet this objective, access to the arterial was to be restricted to eliminate additional vehicles maneuvering on and off the highway from a relatively heavy traffic stream. Although traffic volumes differ substantially from one part of the province to another and existing development varies as well, *the arterial system must be protected in its entirety if it is going to serve its purpose.*

Since 1979, the integrity of the arterial highways has been severely compromised by a culmination of factors. *Both commercial and residential development on the arterial system has continued.* The arterial highways with the most traffic are the ones most attractive to commercial development. Locations with the highest traffic volume are also the most hazardous locations from a safety perspective. Any changes required to improve safety after the development has been in operation are assumed to be the province's responsibility!

Existing Planning Act Regulations define a farm as any parcel of land which is greater than ten acres in size. This permits anyone who can afford the ten acres to develop along the arterial highway. This is *abused* by those who purchase 10 acres and then return any excess land back to the original owner. In some instances, it is questionable if the ten-acre parcel ever existed except on the building permit application. A review in 1986 showed approximately *160 building permits had been issued on arterial highways since 1979.* The more common reason for the approval of these was the "ten-acre" rule.

The present Regulations permit a lot to be created which will be served by the farm home driveway. A number of lots have been approved under this Regulation with the owner installing a new access to the arterial highway after the home is occupied.

Although the *Planning Act* does not permit subdivision along the arterial highways with direct access to it, lots have continued to be deeded and sold. Any easing of Regulations which would provide access to those lots would create a new cycle of development along the arterial system.

The Planning Act Regulations permit access to the arterial highway providing that a five-lot subdivision is created. We understand this has not created a significant problem but it has the potential for abuse. Intersections created to serve successive subdivisions would result in too frequent disruptions to the traffic stream and a reduction in passing zones.

Access to the arterial system also restricted the change of use of an existing access to a more intensive use without Ministerial approval. In some instances, change of use occurred from residential to commercial without any evaluation of the increased safety hazard from additional turning traffic.

Accidents involving access account for at least 10% and perhaps as much as 50% of the accidents on the arterial highways.

Increased development results in demands for speed limits, as the residents blame the through traffic for safety problems rather than realizing that the residential development has created safety problems for through traffic.

We understand that elected officials support access controls generally but many support landowners and developers individually when applications are made. As well, municipal governments often support development in preference to safety. The problems then created usually fall back on the province to correct - if correction is possible. As development takes place along these routes and as traffic volume increases, solutions are not always available to solve the safety and congestion problems.

Restricted land availability and frequency of access in developed areas often results in lower design standards for highway improvements when reconstruction does take place.

The Planning Act Regulations of 1979 have only been partially effective in reducing the development pressure on the arterial highway system. With increased traffic volumes, increased trucking with larger trucks, and with the desire to reduce travel times, maintaining a safe and efficient arterial system will become increasingly difficult. *Over the last 5 years traffic volumes on the arterial system have increased an average of 8% per year.* Truck traffic has generally kept on par with this increase.

As the traffic volumes grow, delay and congestion occur with greater frequency. Each turning maneuver is more likely to conflict with through traffic. With through traffic travelling with less distance between vehicles, reaction and braking time is reduced and accidents are more likely to happen. The combined effect of both increased traffic and increased access will not only increase the number of accidents but quite possibly the accident rate as well.

It is not only the economic and social costs of accidents that must be considered; the economic value of the highway system and its value to the rest of the economy is also a factor. If a value of $500,000 per kilometer is placed on the existing arterial highway then the *value of the existing infrastructure is over $200,000,000. This resource is too valuable to gradually lose to increased access.*

The replacement costs for any sections would have to include land acquisition. In some areas, such as the Summerside isthmus, undeveloped land suitable for highway construction is not readily available. Replacement costs would undoubtedly be higher than the present value. After replacement what is now a $500,000 kilometer of arterial highway may become a local street which could have been built for $200,000!

The arterial highway provides economic benefits to the communities that it serves. If it meets the user goals of dependability, comfort, safety, economy and enjoyment, it will make the regions it serves more valuable. Development will be encouraged knowing that a reliable transportation system exists to carry the raw or manufactured goods to and from the facility. *The transportation system makes the outlying areas more competitive by reducing the transportation costs.* It also increases the likelihood of additional traffic being generated to utilize the goods and services provided locally in the region. *Any impediments to the movement of through traffic reduces the effectiveness of the arterial system to benefit all areas of the province.*

Each municipality on the arterial system receives some economic benefit from it. That economic benefit may too often be associated with direct access for commercial development. This works to the economic benefit of the municipality in the short term through new development, but the associated problems may reduce the economic benefit of the system to the province. *The viability of the system to meet the provincial needs cannot be allowed to deteriorate according to the desires of the individual municipalities. Safety and access control need to be maintained along the arterials through the municipalities to ensure that both user and provincial goals are met.* Good municipal planning can utilize the system without detracting from the intended purpose.

With limited revenues, the only avenue for government may be to cut costs without curtailing services. This requires better utilization of existing transportation facilities and resources through improved management, regulation and administration. This controls the costs of existing services and keeps costly new facilities to a minimum.

Throughout the term of our inquiry, we have witnessed numerous examples of new construction along arterial highways, each of which represents one more incremental loss to highway efficiency. At the same time, our public hearings brought forward numerous voices calling for an end to access. Our earlier reference to the brief from the West Prince Chamber of Commerce, cited in the chapter entitled "Current Situation", is but one example of a position on which there is widespread consensus.

Accordingly, we recommend

- **THAT land use policies recognize the importance of roads in effective land use planning.**
- **THAT the province develop a transportation plan which can be utilized as part of a comprehensive land use plan to better plan future development activities both on a provincial basis and in conjunction with municipalities, other interested groups and the general public.**
- **THAT land use policies recognize the arterial highway system as a vital element in maintaining the social and economic fabric of the province and maintain that system to provide the highest level of mobility, dependability, economy, comfort and beauty available.**
- **THAT additional access to the arterial highway system be eliminated.**
- **THAT existing access to the arterial highway be eliminated where an alternative access to the highway system is available.**
- **THAT existing access to the arterial highway be stringently controlled to prevent a change of use that would increase the use of the adjacent property.**

The collector highway system was selected to connect all existing towns and villages to each other and the arterial system. As well, some collector highways were to provide access to the National Park; others were identified as serving a collector use and having traffic volumes equal to or exceeding 750 vehicles per day.

The collector system is one which endeavours to serve two masters. It attempts to provide safe and effective traffic movement and also provide direct land access. If both demands escalate, the route will obviously fail in one of its purposes.

The Planning Act Regulations recognize both needs by allowing limited land access along the collector routes and restricting the change of use of existing accesses. We understand that no research has been done by the province on how the existing regulations have performed on collector highways. Collector highways that serve the popular tourist areas in the province carry very high volumes of traffic during the summer period and accordingly are under severe pressure from roadside development.

As development takes place along highways, one of the first demands from the residents is for a speed zone. If it is installed it effectively notifies motorists that the roadway purpose has changed from serving through traffic first to serving land access first. Prospective residents interpret the speed zone as a safer place to build, development continues and the system efficiency for through traffic deteriorates.

The collector system should be scrutinized to determine the traffic movement being served. Both annual and seasonal traffic volumes need to be examined to evaluate which of the routes serve an appreciable traffic movement. Those routes which do serve this function and have the potential to continue doing so may need further protection to improve safety at accesses, control change of use of existing accesses and keep development at an acceptable level.

The level of development that can be safely accommodated on an 80km/hr. highway is not well established. What can be done is to improve the level of safety before an access is given approval by stipulating greater sight distances and entrance restrictions. This will keep development away from the most hazardous areas on the collector routes. The next step is to choose whether to preserve the route for through traffic and make it arterial or accept that land development has eliminated the long-term traffic service and accept it as a local road.

The problem of indiscriminant development and seasonal traffic along collector roads presents numerous problems above and beyond the statistics on users and traffic flows and so forth. During our tour of the province, for example, we witnessed numerous examples of ribbon development which is presenting a landscape issue in parts of the province. The deterioration of the Brackley Point Road is an excellent example: once a scenic road to the National Park, it now promises to be another Cavendish strip in the making.

These issues are having an effect on rural lifestyles in numerous ways, some small but meaningful, others more profound. Farmers have mentioned to us the problems associated with moving farm machinery during seasonal traffic peaks, particularly on North Shore collector roads. One indicated it was not uncommon to take up to 30 minutes to collect his mail from a rural postbox across from his driveway during the busy summer season. A parent from the Brackley area told one of our staff of how she could not permit her children to use their bicycles to go to nearby homes, as she once did, because she had attended three funerals for children killed in highway accidents in the area in recent years. While the rights of property owners and their pocketbooks are often brought to the forefront whenever tough safety measures are proposed that would limit or curtail individual freedoms, these lifestyles issues need to be taken into consideration in setting development policies, safety standards and land use controls.

Local roads cover all highways not designated as arterial or collector. Local roads provide direct land access so strip development is permitted. Along all paved local roads the only restriction on access location is safety and farm accesses have been exempt from this. We understand that the main abuses along paved local roads are lots which are being created and sold without safe-sight distance. Agricultural accesses, which have not required safe-sight distance, are being changed to residential use.

Accordingly, we recommend

- **THAT the collector highway system be studied to determine its existing role and future potential in the transportation system.**
- **THAT the local highway system have safe access standards for all uses and higher standards for more intensive uses with appropriate legislative changes to prevent abuses that impinge upon safety standards.**

Development along unpaved, seasonal or non-essential roads results in high costs of highway improvement and difficulty of maintenance, because of varying rights-of-way widths and poor design standards. Moreover, such development frequently results in financial drain on the public purse that far outweighs any benefit that may be derived from such development. The classic example relates to residential construction where eventually demands for paving come sooner or later. In addition, residential development can result in the need for such services as snow plowing and school bus transportation. The conversion of seasonal homes to year-round homes produces the same result eventually.

Accordingly, we recommend

- **THAT land use policies restrict development on unpaved, seasonal or non-essential roads where the change of use would result in increased public costs that outweigh, in the long-term, the public benefit of the development.**

A study entitled *The Island's Rustic Roads: A Partial Inventory, Evaluation and Classification of Little-used Woodland Roads in Prince Edward Island* was prepared by Stanley E. Vass for the P.E.I. Department of Community Affairs (as it was then called) in 1982. Mr. Vass identified 260 "candidate roads" and evaluated 185 (71%) of these. The roads represented 532 km. (331 miles) which he assigned among seven classes of "attractiveness". In his report, at p. 11, he stated he found:

> (1) 38 very attractive roads, 101 km. (62 miles) which we feel should be protected and maintained, and of which 19 are clustered within the central highlands of Queens County and 9 in the Caledonia district;
>
> (2) 56 roads, 158 km. (98 miles) sufficiently unattractive that they are best suited as woods access roads.
>
> The remainder, however attractive, are in too developed a condition to meet the inventory's requirement of naturalness in roadside appearances.

A second study, *Prince County Rustic Roads* was prepared for the Island Nature Trust by Reginald Porter in 1988.

In the meantime, legislative measures were put in place to have a scheme of "Scenic Heritage Roads". That program is outlined in a publication prepared by the Department of Community and Cultural Affairs and the Island Nature Trust. It describes a total of 16 roads: 3 in Prince County, 9 in Queens County and 4 in Kings County. In all, there are some 50-60 km. of roads described in the brochure.

The introduction in this brochure explains the central thrust of this program with this paragraph:

> For the past seven years concentrated efforts have been made toward the identification, evaluation and protection of these roads. The designation of Scenic Heritage Roads became possible in 1987. In an effort to prevent users, both private and public, from altering these roads and their vegetation, the Provincial Government passed regulations under the Planning Act controlling activities that may take place there. Under these regulations it is an offence for any person, without written permission from the Minister, to cut or remove trees, shrubbery or plant life or to alter the landscape of a Scenic-Heritage Road in any way.

While there may be a logical reason for changing the name from "rustic roads" to "scenic heritage" roads, we are of the view the term now used is ill-advised. "Scenic heritage" roads may have appropriate significance to indicate the criteria on which such roads are selected but the title is too akin to that used to describe the well-established network of "scenic drives". To some, this may seem insignificant but potential for confusion, particularly among visitors not familiar with locales, is so inherent we are recommending the more general term "rustic roads" be utilized.

We think this a fitting change for a second reason. The designation of more country roads, particularly in Prince and Kings counties, is worthwhile, even if they are not of importance for the heritage perspective.

That the majority of such roads are now in Queens County is but one more example of the tendency to centre tourism in the central part of the province!

During our public hearings, we were advised of instances where local wishes on such designations were ignored completely and selections resulted in choices that local officials felt to be somewhat inappropriate. We urge more attention should be given to the views of residents in this selection process.

While the program aims at the preservation of vegetation along these roadways, we would suggest that some prudence must be exercised in this regard. We understand the death of old field white spruce presents a pending problem along some of these roads. More immediately, our tour of the province suggested that some of these roads need some maintenance to ensure that those who visit these attractions are able to do so without damage to their vehicles from encroaching shrubbery or poor roadways.

Accordingly, we recommend

- **THAT the scenic heritage road program be re-named to "rustic roads" to avoid confusion with the scenic drive program.**
- **THAT, to preserve our traditional heritage, many more such roads be designated, particularly in Prince and Kings counties.**

- **THAT the views of local residents be sought and respected in choosing such roads, and that some means be devised to involve local residents in the clean-up of such roads, similar to the existing roadside clean-up programme.**
- **THAT these roads be inspected and maintained in accordance with the objectives of the program.**

Three "scenic drives" encircle the province, enabling travellers to view scenic areas that frequently represent the best our landscape has to offer. The Blue Heron Drive, the Lady Slipper Drive and the Kings Byway have been tourist attractions, enjoyed as well by many Islanders, for a number of years. Each scenic drive essentially centers on one county in the province. As part of our provincial tour, we had the opportunity to view many parts of these scenic drives; our report is contained in Appendix B of Volume II.

As a result of our observations, we are of the opinion there are a number of improvements to be made to the present scenic drive patterns. As we have recommended elsewhere in this report, there should be designated look-outs available on scenic drives. The start/finish points of the scenic drives should be better delineated. Familiar as we all were with the province, we experienced difficulties in determining this and we would infer the problem must be all the greater for strangers.

Consideration should be given to re-routing portions of the existing scenic drives so that travellers are exposed to less traffic congestion along portions of these routes, particularly in the northern parts of the Blue Heron Drive. Altering the portion of the Drive that goes directly through Cavendish, for example, would reduce traffic along a stretch of highway that is frequently congested with summer traffic. A change would display some of the Island's most dramatic inland "working landscapes" in the agricultural sector.

Land use policies should take particular account of the scenic drives. Areas where sweeping vistas of the land or the sea or both should be subject to careful development controls. Ribbon development and cottage development in particular should be curtailed in numerous places in such a way that development, wherever possible, is confined to one side of the highway so that residences face seaward but the view between road and sea is relatively unobstructed by development.

Accordingly, we recommend

- **THAT the start and finish points on scenic drives be better delineated.**
- **THAT portions of the Blue Heron Drive, now routed along Route 6, be re-routed to bypass North Shore traffic congestion.**
- **THAT land use policies take scenic drives into consideration by subjecting adjacent areas with careful development controls to curtail extensive ribbon development and cottage subdivisions.**

Chapter 7

COMMUNITIES

The 1973 *Report of the Royal Commission on Land Ownership and Land Use* considered the subject of communities only in a very limited context, with a chapter devoted to the topic of "Community Participation and More Detailed Land Use Plans". Arising from this, the Royal Commission made two recommendations regarding the role of communities in land use planning (Volume II, Appendix G, Chapter VII and Recommendations 5 and 6). We feel it essential to examine first the framework of the structures created in the context of municipal government in the province.

This subject can be understood most readily if we begin by considering the network of communities that make up the Province as a hierarchy. At the top of the pyramid is the City of Charlottetown, a municipality of approximately 15,000 with its own Act of incorporation. At the second level there are "towns", but here the picture begins to become complicated for the Town of Summerside, with its own Act of incorporation, is not a "town" within the scope of the *Municipalities Act*, R.S.P.E.I. 1988, cap. M-13.

Until recently the *Municipalities Act* defined three major layers in the hierarchy of communities: towns, villages and community improvement committees. To complicate what needs no undue complexities, the legislation groups villages and community improvement committees under the title "communities", while it reserves the term "municipality" for all three entities. A recent (1990) amendment to the legislation adds yet another form of municipal incorporation (the "resort area"), which we have considered subsequently in this Report under the heading of "Cavendish".

Schedule 1 of the *Municipalities Act* enumerates the existing towns, villages and community improvement committees. It would appear there are a total of 88 municipalities, of which 7 are towns, 30 are villages and 49 are community improvement committees under the *Municipalities Act*, in addition to the City of Charlottetown and the Town of Summerside.

Data on these Island municipalities is presented in Table 1:

TABLE 1

Name of Community	Status	Population	No. of Elected Officials	Date of Incorp.
Charlottetown	City	15,776	11	1855
Summerside	Town	8,020	6	1877
Alberton	Town	1,103	7	1913
Borden	Town	514	8	1919
Georgetown	Town	729	7	1912
Kensington	Town	1,105	7	1914
Montague	Town	1,994	8	1917

Parkdale	Town	2,065	7	1973
Souris	Town	1,379	7	1910
Abrams Village	Village	334	6	1974
Bedeque	Village	158	3	1978
Bunbury	Village	1,054	7	1969
Cardigan	Village	321	3	1954
Central Bedeque	Village	199	3	1966
Cornwall	Village	1,894	7	1966
Crapaud	Village	332	3	1950
East Royalty	Village	2,039	7	1977
Hillsborough Park	Village	996	7	1976
Hunter River	Village	317	7	1974
Kinkora	Village	256	7	1955
Miminegash	Village	288	2	1968
Miscouche	Village	677	5	1957
Morell	Village	359	3	1953
Mount Stewart	Village	344	3	1953
Murray Harbour	Village	404	5	1953
Murray River	Village	476	5	1955
North Rustico	Village	635	5	1954
O'Leary	Village	823	6	1951
St. Eleanors	Village	3,743	7	1956
St. Louis	Village	135	3	1964
St. Peters Bay	Village	265	6	1953
Sherwood	Village	5,769	6	1960
Southport	Village	1,321	7	1972
Tignish	Village	960	6	1952
Tyne Valley	Village	187	3	1966
Victoria	Village	189	2	1951
Wellington	Village	405	8	1959
West Royalty	Village	2,070	6	1980
Wilmot	Village	1,708	6	1965
Afton	CIC	826	8	1974
Alexandra	CIC	259	6	1972
Annandale-Little Pond-Howe Bay	CIC	352	6	1975
Belfast	CIC	1,839	11	1972
Bonshaw	CIC	186	6	1977
Brackey	CIC	284	7	1983
Brudenell	CIC	358	7	1973
Carleton Siding	CIC	494	7	1977
Central Kings	CIC	563	9	1975
Central Lot 16	CIC	122	5	1972
Clyde River	CIC	523	7	1974
Cross Roads	CIC	1,765	7	1972
Darlington	CIC	78	7	1983

Eastern Kings	CIC	1,272	15	1974
Eliot River	CIC	996	8	1975
Ellerslie-Bideford	CIC	463	12	1977
Grand Tracadie	CIC	543	6	1984
Greenmount-Montrose	CIC	323	7	1977
Hampshire	CIC	327	8	1974
Hazelbrook	CIC	216	6	1974
Keppoch-Kinlock	CIC	453	6	1983
Kingston	CIC	685	7	1974
Lady's Slipper	CIC	809	7	1983
Linkletter	CIC	305	7	1972
Lorne Valley	CIC	91	7	1978
Lot 11 and Area	CIC	780	7	1982
Lower Montague	CIC	450	8	1974
Malpeque Bay	CIC	1,238	9	1973
Meadowbank	CIC	258	6	1974
Miltonvale Park	CIC	1,080	7	1974
Nail Pond & Skinner's Pond	CIC	239	7	1975
New Haven-Riverdale	CIC	570	9	1974
Northport	CIC	253	7	1974
North River	CIC	1,732	9	1974
North Shore	CIC	737	11	1974
North Wiltshire	CIC	208	6	1974
Pleasant Grove	CIC	194	11	1980
Richmond	CIC	248	7	1979
Sherbrooke	CIC	567	10	1972
Souris West	CIC	327	5	1972
St. Felix	CIC	359	11	1977
Tignish Shore	CIC		9	1975
Union Rd. (Queen's)	CIC	187	6	1977
Valleyfield	CIC	648	6	1974
Warren Grove	CIC	220	9	1985
West River	CIC	538	10	1974
Winsloe	CIC	1,123	7	1971
Winsloe South	CIC	143	6	1986
York	CIC		7	1986

(Source: Department of Community and Cultural Affairs 1989 Municipal Directory, which reports 1981 population data for some municipalities and 1986 for others.)

An examination of the information provided in this Table shows the 7 towns incorporated under the *Municipalities Act* were incorporated between 1910 and 1973. Jointly, they encompass a population base of 8,889 people with Borden (pop. 514) being the smallest and Parkdale (pop. 2,065) being the largest of these towns. (The average population for the seven towns is 1,270.) Together some 51 elected officials are involved in the municipal structure for these seven communities. If we include the City of Charlottetown and the Town of Summerside in this examination of municipalities, we find there is a population of 32,685 residents - about 25% of the Island's population governed by a total cf some 68 elected officials in these 9 incorporated communities.

Even though the twentieth century trend in the province has been one of urban growth and rural decline, the Table also shows that municipal government at the village level commenced only forty years ago. Crapaud, the oldest of the 30 villages was incorporated in 1950; the youngest, West Royalty, was incorporated only a decade ago, in 1980. Apparently the formation of villages was a pattern of the 1950's (when 14 of the villages were incorporated) and 1960's (when 8 were created), rather than the subsequent years, since only 6 of the villages have been incorporated in the 1970's.

Nearly one-quarter of all Island residents live in villages: a total population of 28,658 residents, according to the Table, which results in an average population of 955. The 30 villages are governed by some 154 elected officials.

Community improvement committees were, until 1990, the latest innovation in municipal structures in the province. The oldest of these, Winsloe, was incorporated in 1971. If villages were largely the creations of the 1950's and 1960's, C.I.C.'s (as they are commonly called) have been a product of the 1970's: only 8 of the 49 community improvement committees have been incorporated in the last decade.

About one-fifth of the total population of the province live in community improvement committees. Although the aggregate population of the C.I.C.'s is 26,231 (just 2,400 less than the number of people living in Villages), municipal government at this level requires more than twice the number of elected officials, for some 379 participants are found on the various community improvement committees.

Prince Edward Island often has been acclaimed for its direct democracy by reference to its four members of Parliament and thirty-two M.L.A.'s. Usually ignored, however, is the fact that a population of 87,574 residents are governed at the municipal level by some 601 elected representatives as Table 2 shows:

TABLE 2

Municipal Unit	Population Aggregate	Number of Elected Officials	Ratio of Elected Officials to Population
7 Towns	8889	51	1:174
30 Villages	28658	154	1:186
49 C.I.C.'s	26231	379	1: 69
City of Ch'town	15776	11	1:1434
Town of S'side	8020	6	1:1336
Total	87574	601	1:145
Total Population 1986 Census		126,646	

Provincial MLA's	32
Ratio of population to provincial representatives	1:3957
Population not in municipal areas:	39,072 (30.85%)

What is the rationale for each of these communities (i.e. settlements of people) being designated as one particular type of municipality? On what basis has a choice been made to form an incorporated area for the residents of the locale encompassed in the boundaries of the particular community?

The population of the community is certainly not the governing factor. While several of the towns are communities with larger populations, Borden (pop. 514) is a town, while Sherwood (pop. 5769) is not. Indeed, almost one-half of the villages (13 of 30) are larger, in terms of population, than the Town of Borden, while 11 of the villages have a population larger than that of the Town of Georgetown. Parkdale - the largest town under the *Municipalities Act* - has almost the same number of residents as the Village of East Royalty and Parkdale has fewer residents than the Villages of West Royalty, St. Eleanors and Sherwood. Comparing towns and villages with community improvement committees, by population, is a more difficult exercise because many C.I.C.'s cover such a wide geographical area. Nonetheless, we note there are geographically compact C.I.C.'s [such as Cross Roads (pop. 1,765), Miltonvale Park (pop. 1,080) and North River (pop. 1,732)] that have more residents than many of the towns and villages. Clearly, population has not been a central determinant in positioning Island communities in the municipal framework.

Geographical size has nothing to do with the matter: some of the community improvement committees encompass huge areas; others are very small. The community improvement committees for Belfast (pop. 1,839), Eastern Kings (pop. 1,272) and Malpeque Bay (pop. 1,238) are responsible for large land areas. Others, smaller geographically, reflect a very low population density, with two of the community improvement committees having a population base of less than 100 residents each.

Settlement patterns seem to count for naught: Vernon River, Marshfield, Tracadie, and St. Theresa are all examples of rural areas with "communities" that are unincorporated. On the other hand, many of the community improvement committees seem to be "artificial communities", encompassing a geographical area which includes a collection of small rural areas that, at one time, were rural school districts. The community improvement committees for Belfast, Eastern Kings and Malpeque Bay appear to be instances of this pattern.

Nor can it be said that this patchwork derives any sort of systematic logic from the powers and responsibilities granted to municipalities in the Province. Part VIII of the *Municipalities Act* defines "municipal powers" in the following provisions:

PART VIII
MUNICIPAL POWERS

30. The council of a town or village set out in Schedule 1 may provide

- (a) administration of the municipality;
- (b) fire protection;
- (c) garbage and refuse collection and disposal;
- (d) street lighting;
- (e) recreation;
- (f) drainage;
- (g) sewerage collection and treatment;
- (h) sidewalks;
- (i) roads, streets, parking and the regulation of traffic;
- (j) police protection and law enforcement;
- (k) water distribution and purification;
- (l) parks;
- (m) community or regional development;
- (n) tourist development and promotion;
- (o) industrial or commercial development and promotion;
- (p) housing development and promotion;
- (q) land assembly for municipal purposes;
- (r) local libraries;
- (s) assistance to community organizations;
- (t) community development projects;
- (u) animal control;
- (v) signage control;
- (w) building and standards control;
- (x) regulation of real property maintenance;
- (y) regulation of business practices;
- (z) public transportation.

31. The council of a municipality for which a community improvement committee has been established as set out in Schedule 1 may provide any of the following services:

- (a) administration of the municipality;
- (b) fire protection;
- (c) garbage and refuse collection and disposal;
- (d) street lighting;
- (e) recreation.

32. A municipality established under section 8 or 9 as a town or community may provide such services as may be specified in the order incorporating the municipality.

33. (1) Where a municipality desires to expand the services provided by the municipality to include any service specified in section 30, it shall apply to the Minister indicating the additional services it desires to provide, the need therefor, the financial implications thereof, and the extent of resident support therefor.

(2) The Minister shall review an application under subsection (1) and make a recommendation thereon to the Lieutenant Governor in Council.

(3) The Lieutenant Governor in Council may approve or reject the application and where the application is approved he shall, by order published in the Gazette, authorize the municipality to provide such additional services as are specified in the order.

Part VII then provides a smorgasbord of powers for towns and villages, while community improvement committees have a more limited selection. It does nothing to simplify the substance of the *Act* to learn that, while the legislation clearly distinguishes between towns and "communities" (i.e. villages and community improvement committees), when the legislation turns to municipal powers - which is surely one of the most fundamental and substantive aspects of the whole regime - one type of "community" can have the same powers as a town, whereas another type cannot! Indeed, under the legislation it is possible for a particular village to exercise more powers than a particular town. In fact, the legislation guarantees that the powers exercised by towns, villages and (albeit to a lesser extent) community improvement committees will be a patchwork of total variation.

The provisions of the *Municipalities Act* relating to municipal powers are not only a formula for diversity, they also constitute a recipe for confusion. The legislation presumes, for example, that each municipality carried on certain services in the past under the auspices of the *Municipalities Act* it replaced when first enacted in 1983. But, suppose a municipality has traditionally provided a service that has been allowed to lapse. Must it apply for permission to "expand" its services? Is there any commonality of powers exercised by those units with municipal autonomy? Apparently not.

The provisions of Section 30 contain a number of subject headings that are closely akin to land use planning, but nowhere does it provide specifically for the power to formulate or administer land use plans. The powers of municipalities to create and enforce such plans is derived from the *Planning Act*, not from the *Municipalities Act*. While we shall explore the planning function in relation to communities in our discussion on planning, we note here that we have been advised that the *raison d'etre* for community improvement committees was to enable rural, unincorporated areas to have tools for local land use planning!

Even though many of the 49 community improvement committees may have been created to provide a structure for the fulfilment of planning objectives, this has not happened in many instances. We understand that some 75% of the community improvement committees do not have plans. Of the C.I.C.'s with official land use plans, they are, with few exceptions, rural areas in close proximity to the urbanized regions around Charlottetown, Summerside and Montgue.

While we have not examined in depth the functions actually undertaken by the many C.I.C.'s that have been brought into existence, it is questionable to what extent some of these incorporated units are active in providing any services for the residents in their areas. We have, for example, examined the 1989 real property tax rates for all municipalities in the province and we have found that 6 of the community improvement committees levied neither commercial nor non-commercial property taxes at the municipal level. Since property taxes constitute the sole form of taxation revenues for municipalities, the absence of any taxation levy suggests services provided by the municipality must be limited. (There could, of course, be some service provided by the community improvement committee and financed through fees or grants, for example.) Nevertheless, we understand that there are community improvement committees which have been relatively dormant since their creation.

We are of the view that the municipal patchwork created by the *Municipalities Act* must be streamlined, that incorporated communities must be strengthened, and that a first stage in the process necessary to accomplish these goals lies in the abolition of community improvement committees.

Throughout our hearings, a number of problems with respect to communities - and the structure under which they are presently constituted - were identified for our consideration.

One of the chief problems has arisen from the development of new municipal structures on the boundaries of older communities, in place of enlarging the boundaries of the older incorporated entity. This practice has created difficulties for numerous municipalities, permitted adjacent tax havens and weakened the fiscal capacity of the older settlements.

The trend is usually one that begins with some new homes being located just outside the boundaries of an existing municipality. As "ribbon development" is born in the area, residents of the unincorporated sections enjoy the best of both worlds. They are often able to obtain cheaper land prices for property taxes are lower, the land is unserviced and there are no fees for sewer or water utilities. Lots may be larger, too, and the "middleman" costs for such items as surveying may not be necessary. In any event, these residents are able to enjoy much of the same amenities as those within the adjacent municipality, but without the tax burden. They enjoy proximity to churches, shops, services and schools. Municipal taxpayers provide the funding for libraries, parks and recreational facilities that those in the "outlying" area can access for free or for a nominal fee that, very likely, does not meet operational costs, much less a share in the capital expenditure. There may not be street lights or sidewalks - but these may not be available for some or all municipal residents either. When these residents of the unincorporated areas, joined by businesses who likewise see the financial benefits of associating with the parade to ribbon development, start leaving the municipality, its tax base starts to erode and its property tax rate begins to rise - leaving the incorporated community with an ever-increasing demand for maintaining or enhancing its services but no way to effectively compete with the attractions of adjacent locales. Logically, the solution lies in expanding municipal boundaries, but the main (and perhaps, sole) argument the municipality can put forward for this step is its need for revenue which is, of course, the central reason why such a proposal is actively opposed by any residents who would become part of the enlarged municipality.

Instead of responding to this cycle as it evolved for the past two or three decades by providing municipalities with some leverage in expanding their jurisdictions, the Province responded by creating competing municipalities. The result has been inefficiencies, rivalries and often poor decision-making in land use and other matters. Commonly the situation has been characterized by an absence of decision-making in land use planning, at least until an individual crises requires a response which, all too often, is personalized at the local level.

Table 3 below illustrates the comparable property tax rates for several of the older municipalities and for the newer incorporated municipalities adjacent to them.

TABLE 3

	1989 Commercial Property Tax Rate	1989 Non-Commercial Property Tax Rate
Charlottetown Area		
Charlottetown	$2.29	$0.92
Parkdale	1.40	0.80
Sherwood	0.885	0.590
East Royalty	0.900	0.500
West Royalty	0.660	0.330
Hillsborough Village	0.900	0.500
Southport	0.840	0.420
Bunbury	0.600	0.370
Keppoch-Kinlock	0.210	0.210
Cornwall	0.510	0.510
North River	0.300	0.250
Miltonvale Park	0.180	0.090
Elliot River	0.220	0.170
Meadowbank	0.065	0.065
Summerside Area		
Summerside	$2.460	$1.230
St. Eleanors	1.120	0.560
Wilmot	0.700	0.350
Sherbrooke	0.240	0.120
Linkletter	0.120	0.120
Borden Area		
Borden	$1.650	$0.650
Carleton Siding	0.100	0.100
Montague Area		
Montague	$0.830	$0.770
Brudenell	0.080	0.080
Lower Montague	0.050	0.050

Tignish Area

Tignish	$1.100	$0.850
Tignish Shore	0.600	0.600

Souris Area

Souris	$1.700	$0.800
Souris West	0.030	0.030

We recognize that comparisons between municipalities may be complex and should not be judged solely on such a simplistic scale as tax rates. For example, one municipality may provide a garbage collection service funded through its general revenue and therefore reflected in its tax rate, whereas another municipality may opt for a similar service but pay for it primarily or exclusively on a user fee basis. In spite of such limitations, we are of the view that the property tax contrasts between adjacent municipal units is a significant factor in land use and planning decisions.

Consider, for example, the resident of the Summerside area with a property assessed for taxation at $50,000. More than likely, the property that is assessed for $50,000 that is located within the Town of Summerside will not be the same as one found elsewhere. [Location is an important factor in property assessment so a house built on one street may have a different value, and hence a different assessment, from an otherwise identical house located only a short distance away.] But, leaving this aside, the Summerside homeowner has been billed $615 for municipal taxes in 1989, while the St. Eleanors homeowner has been billed $280. In Wilmot, the community tax share is $175, but in either Sherbrooke or Linkletter, a mere $60 will suffice. The differential in respect to commercial property is even more pronounced. And, this is a pattern repeated again and again across the province.

The inequities of the property tax structure is not the only reason for urging the elimination of community improvement committees. Indeed, if this were the sole problem, the solution would be in changes to the property tax regime itself, as we suggest elsewhere.

The community improvement committee structure is a waste of human resources and, at the same time, it is a system without sufficient capacity to be effective as a proper management tool in the administration of land use plans and other services.

Let us consider these criticisms, first by examining our view that C.I.C.'s are a waste of human resources. C.I.C.'s, like other municipal governments on the Island, are run by volunteers. While there may be some token payments to councillors and, in larger municipalities, paid staff members, managing the services that can be provided (garbage collection, street lights, recreation, fire protection and municipal administration) occupy nearly 400 elected officials in the 49 C.I.C.'s. We submit that where these services are now being provided by C.I.C.'s, there are more effective and efficient ways to provide such services than the apparatus and structure necessarily attached to a municipal unit.

Moreover, municipal incorporation involves responsibilities that impose financial burdens C.I.C.'s are probably ill-equipped to handle. As a municipal entity, they require the services of an auditor. The municipality can be held liable for its actions, including inaccurate information passed out by its administrator. At the same time that the C.I.C.'s are paying for the trappings that are part and parcel of being a municipality, the human resources and talents of community leaders in rural areas are not available for other community activities.

Many provincial municipalities, in our view, lack capacity to be effective. This is not a criticism of the people involved in the system; it is a fact of life brought forward to us in numerous ways. Municipalities, particularly at this level, do not have the means to enforce bylaws. The presence of nearly 100 municipalities - each requiring at least one "staff" member calls for training of municipal administrators that is left to the resources and inclination of the individual municipality.

Examples demonstrate how capacity is lacking at a relatively simplistic level. One respondent cited the instance of wanting a copy of municipal bylaws in connection with a potential dispute. The municipality - one of the larger villages, and one with an official plan and more administrative infrastructure and expertise than many municipalities - was unable to provide a copy. Moreover, there was no way to photocopy the only available text without taking the document outside the community and using the nearest equipment that happened to be several miles away. In another example, a municipality removed playground equipment from a small park because liability insurance had become too expensive and all coverage was relinquished for budgetary reasons.

Recently we have witnessed a number of legal disputes involving some of the larger municipal units. These examples indicate the growing complexities of municipal government and point to the types of skills that community officials need to have in order to function effectively. We cannot afford to equip dozens of municipal units to meet such standards and we are not being fair to the residents of municipalities which lack the necessary capacity to meet the required standards.

Finally, we have been told, repeatedly, by the people who have been involved with the smaller municipal units of the difficulties created for them because of these structures. They have acknowledged that land use decisions are not easy ones to make and that in many instances, they have found it easier to say "yes" when they felt the best decision would have been "no". The dilemma was outlined to us in numerous presentations: longstanding friends or neighbours would approach the community council for permission to do something the councillors felt was not in the long-term best interests of the community but, in light of the personal circumstances of the applicant or the potential disruption of good relationships, the council would refuse to negate the applicant's aspirations. Instead, they would hope someone else - whether it be provincial officials in the Department of Community and Cultural Affairs or the Land Use Commission - would interfere, often knowing such obstruction was not possible unless someone else in the community felt sufficiently courageous or aggrieved to bring the matter before the Land Use Commission. Even without this personal dilemma, the people involved in the very "front lines" of municipal government often confessed to us their feelings of "inadequacy" in dealing with land use planning issues that were in any way removed from the most routine matters.

If community improvement committees are abolished, what are the alternatives open to areas that have been incorporated under this type of arrangement over the past two decades?

Let us consider this question first from a functional standpoint. Where the community improvement committee has been dormant, the abolition of C.I.C.'s would not have any effect other than a formal recognition of the status quo. More active C.I.C.'s have the power to provide four types of services, apart from "administration of the municipality". Under the provisions of Section 31 of the *Municipalities Act*, their services are restricted to fire protection, garbage and refuse collection and disposal, street lighting, and recreation. A variety of alternative structures are available to allow an unincorporated area to have a structure for the delivery of some or all of these services to area residents. The *Fire Prevention Act*, R.S.P.E.I. 1988, cap. F-11 has provision for the creation of fire districts to provide rural fire services. The creation of an association of homeowners, a non-profit corporation or a more informal community group are all possible structures available as models to provide the delivery of any of the services. Alternatively, a community improvement committee has the option of retaining its status as a municipality by incorporation as a village. This possibility, however, must be tempered, in reality, if the area now served by a community improvement committee is adjacent to a municipality incorporated as a town or a village.

The community improvement committees most likely to be affected greatly by the abolition of this layer of municipal structures are those which have been actively involved in land use planning, which have adopted official plans and which now participate actively in land use planning and decision-making. Judging from the number of community improvement committees who have adopted official land use plans, less than one-quarter of the community improvement committees will fall into this category. In these areas, abolition of community improvement committees will signal a need for area residents to decide whether they wish to relinquish incorporated status at the local level or adopt a different form of municipal incorporation.

Accordingly, we recommend

- **THAT a comprehensive land use plan for the province include municipal reform.**
- **THAT community improvement committees be abolished with appropriate amendments to the** ***Municipalities Act.***

The abolition of community improvement committees alone will not accomplish the reform we feel is required for municipalities in the province. The remaining municipalities - the towns and villages - must be considered in light of the settlement growth that has evolved around their existing borders. In some situations, that growth has taken place in areas that continue to be unincorporated with, as we have indicated, no general or financial incentive to become part of the nearby municipality. Elsewhere, such growth has evolved into community improvement committees and/or - in the case of Charlottetown and Summerside other adjacent towns and villages. While we have dealt with Charlottetown as a separate situation - and we consider the Charlottetown model relevant as well to Summerside - there still remains towns and villages with adjacent incorporated areas, destined to be unincorporated by the wholesale abolition of community improvement committees.

As part of the reform of municipalities, we are of the view that the existing boundaries of all towns and villages must be subjected to review with the goal of enlarging and rationalizing municipal boundaries in many instances. For some, this will mean the annexation of hitherto unincorporated areas. For others, there will be an amalgamation of a town (or village) with one (or more) community improvement committees. (Or, it may be an amalgamation of a town or village with part of an area now included in a community improvement committee, while the balance of the area now included within a community improvement committee becomes unincorporated.) There may also be new towns or villages, evolving from the destruction of community improvement committees. In any event, we are of the view that an overriding principle must be maintained: unity is preferred to diversity. Where two or more municipalities have common borders, a merger is the optimum goal, unless one municipal unit (or part of it) reverts to an unincorporated position.

Drawing new boundaries must take numerous factors into account. Growth outside existing borders is an obvious and paramount consideration. Boundaries that are well-established for other purposes (school divisions, polling divisions, telephone exchanges, postal divisions and so forth) are among such factors. Natural geographical features can be a convenient way to mark the difference between the municipality and its surrounding area. How far afield new municipal boundaries should range is, in our opinion, contingent on local circumstances. But as a "rule of thumb" we would suggest that where the outlying ribbon development begins, so should the municipal borders.

Accordingly, we recommend

- **THAT the boundaries of incorporated areas be reviewed for the annexation or amalgamation of adjacent land in order to encompass growth settlements; to take into account areas where land use plans have been effectively developed by community improvement committes; to plan for future municipal expansionary needs and effective infrastructure development or other long-term requirements; and to rationalize boundaries with natural and nonnatural divisions in each area.**

The municipal structure in the province presents a number of difficulties in relation to unincorporated areas. In many jurisdictions, the delivery of services that are provided by a municipality at the urban level are administered and financed by way of a regional structure, perhaps fashioned at the county level. Elsewhere, the provincial government operates as the "municipality" for unincorporated areas. In the latter model, a tax may be levied on the unincorporated areas to ensure that taxpayers in the municipalities are not subsidizing the rural, municipal role of the province. By putting into place community improvement committees, Prince Edward Island opted for both of these models from a structural standpoint. But it has never adjusted its property tax structure to take into account the municipal type of services provided to unincorporated areas by the province.

With the abolition of community improvement committees, we must ask whether these should be replaced by a county-type of regime to deliver municipal services. Or should the province continue to act in this role for unincorporated areas? Given our objective of developing a more streamlined and effective structure for municipal government - coupled with the size of the jurisdiction - we suggest the province continue to operate as the municipality for unincorporated areas.

What, then, should be the adjustments, if any, with respect to the property tax structure? Elsewhere in our Report we have proposed a review of the present regime with particular regard to identifying the various effects of adopting a revenue-neutral alteration in the commercial tax levy, so that a single provincial-municipal rate is adopted on a province-wide basis with redistribution of the municipal portion of the tax among municipalities in accordance with population proportions.

Coupled with this review, we would urge that the province examine the services it provides unincorporated areas in its role as a municipality for these areas, and in light of this study, the feasibility of revising the property tax structure should be considered.

Accordingly, we recommend

- **THAT the province review the services it provides unincorporated areas in its role as the municipality for these areas and, in conjunction with such a review, examine the feasibility of revising its property tax structure.**

In reviewing materials we received from other jurisdictions and in meeting with officials at the local level, both here and elsewhere, we noted the level of support that is often available to small municipalities but which seems to be lacking in this province. That support is not judged in terms of dollars and cents but in measures designed to provide more cost-effective servicing and enhanced capacity for both the municipalities and their personnel. For example, in rural upstate New York an area of small isolated communities, municipalities have the benefit of officials known as "circuit riders". Each one is assigned a number of small municipalities and acts as the liaison and resource person for the municipalities in relation to the State level of government. When a major development by way of a new military base for the area brought land use planning to the forefront, the resulting preparatory work culminated in the production of loose-leaf binders for all administrators. This document was a composite manual of regulatory requirements, together with sample bylaws, model forms, checklists, flow charts and other information. Material was well organized, easily readable and covered subjects relating to the numerous departments. Another aid for these municipalities was a brief video cassette, explaining the basic roles of municipal officials and where they might seek assistance if they had additional questions.

While the Department of Community and Cultural Affairs, together with the P.E.I. Federation of Municipalities, do provide some support to municipalities by way of such aids as model bylaws in relation to dog control, we are of the opinion that far more initiatives in this whole field can be devised and implemented. Central to this thrust should be the provision of more explanatory materials and training sessions for personnel, far beyond supplying municipalities with copies of recent legislative changes affecting municipal administration in the province. The use of computer technology to assist in municipal administration, a better information flow in relation to the effects of other departments on municipalities and training for elected representatives on their obligations and responsibilities are among the challenges to be met if municipal capacity is to be enhanced.

Accordingly, we recommend

- **THAT the province, in conjunction with the municipalities, explore ways to provide more cost-effective servicing and enhanced capacity for both the municipalities and their personnel.**

Chapter 8

CHARLOTTETOWN

As the capital and only city in the province, Charlottetown is deserving of special discussion of its own in terms of Island communities.

Any student of Island history is well aware of its background: Charlottetown was designated as the Island's capital in 1765. It was the setting for the first Grand Jury assembled in the province in 1771. The first Legislative Assembly met there in 1773 and has continued to meet there in the ensuing time span of more than two centuries. Charlottetown was the site of the first post office for the whole Island in 1802 and the chosen locale for Government House, completed in 1835. It was incorporated as a city in 1855, almost a decade before the Fathers of Confederation held their first meeting in 1864, in what was then the Colonial Building. Charlottetown is rich in heritage - its own community heritage, as well as provincial landmarks and national monuments.

Why dwell on the past in our discussion of Charlottetown? There are two principle reasons. First of all, it is important from the standpoint of land planning to point to Charlottetown as a model. More than two centuries ago, thanks to Samuel Holland, Charlottetown began as a "planned" community. With only a small cluster of primitive buildings, Charlottetown was envisioned as a settlement of streets, of parks, of areas to accommodate agricultural uses and areas to provide settlement. Regrettably, the forethought that enabled downtown Charlottetown to develop as a planned community has been conspicuous by its absence in so much of the settled area that now surrounds it. The visionary example, embodied in this early instance of land use planning, needs to be revitalized throughout the province and the capital city area must be in the forefront of any such move.

Our second reason for dwelling all too briefly on the legacy of Charlottetown's past is because such a heritage is a unique resource that has unlimited future potential. This point has been recognized already by some but their numbers are too few. If one of the leading "industries", one of the major economic sectors, in the provincial economy is to continue to be tourism, land use policies must be reflective of this. As such, it must be recognized that visitors are not attracted to either the province or its capital because the urban area has the same chain stores, the same franchises, the same architectural design and the same attractions as a hundred other urban areas. Charlottetown needs to be different, to have attributes distinguishable from all other destinations that may beckon. Those who suggest more emphasis on the capital as the site of Canada's founding have glimpsed the potential but more, much more, is required if this is to be realized as a goal.

We are of the view that the City of Charlottetown, as it is presently constituted, is not adequately equipped with the necessary tools to effectively develop as a capital city for the province in the twenty-first century.

It would appear that the city's first century as a municipality was characterized by a growth that, in many respects, was not matched in the years that followed. When Charlottetown celebrated its centennial as an incorporated city, in 1955, it published a commemorative history that not only chronicled its achievements over the years but which now provides a snapshot of the city as it existed 35 years ago. It is interesting to compare this view of the city as it existed then, with what we have now as a capital.

One of the most outstanding features is that of population. The 1951 census recorded a population for Charlottetown of 15,887 with the "suburbs" adding a further 4,000 people. In contrast, the 1986 count indicated a city population of 15,776. While the population of the Province has grown and that of the urban area has increased by an even greater proportion, the city's population has marginally declined!

Moreover, the 1955 population was concentrated in a much smaller geographical area. The 1955 map of the City of Charlottetown, for example, showed the area north of Brighton Road and west of North River Road to include only a few named streets: Goodwill Avenue, York Lane, Park Terrace, Bungalow Place, Admiral Street, Waverley Court, Crestwood Drive and McGill Avenue. Kirkwood Drive was the furthermost street on the edge of the City. A block of land bordering on the west side of what was then Elm Avenue - now University Avenue - was designated as "Spring Park Square". In the suburbs, the streets of Parkdale connecting the St. Peter's Road and the Kensington Road included only Belmont Street and Hawthorne, Connolly and Beasley Avenues. The waters around Victoria Park and beyond Brighton Road and York Lane were designated as "bathing" areas.

The comparison with 1955, however, also reveals how much the institutional and commercial sectors of the capital have been altered and, in some cases, eliminated. The medical establishment at that time included two hospitals with 400 beds, a TB Sanatorium of 150 beds and a Polio unit with 16 beds, together with two private clinics. Today, the TB and Polio facility has been transformed and the two private clinics remain, but both hospitals are gone from the capital. With the exception of Holland College, all of the educational facilities that existed between Euston Street and the Charlottetown Harbour (Rochford Square Elementary School, West Kent Elementary School, Queens Square Elementary School and Notre Dame Convent) have been eliminated and their alternatives or replacements have been located in the northern section of the city or elsewhere. Charlottetown had 20 service stations in 1955; in the downtown core of today (below Euston Street), the only service stations are located at the very fringes of this area. Packed into the more compact Charlottetown of 1955 there were 12 churches, 22 law offices, 15 dentists, 5 photo studios, 5 optometrists, 4 funeral homes, 1 architect, 2 chartered accountant firms, 3 real estate offices, 5 banks, 5 trust and loan companies, 1 chiropodist, 1 chiropractor and 10 "industries". The retail sector included 73 stores selling grocery and meats, 9 outlets for fuels, 4 dealers in farm implements, 13 beauty salons, 11 druggists, 11 auto dealers, 7 department stores, 18 restaurants and cafes, 8 hotels, 13 outlets for radios and appliances, 7 jewellers, 6 outlets for auto accessories, 11 mens' wear and 15 ladies' wear stores, 1 novelty store, 3 florists, 3 theatres, 7 bakeries, 3 hardware stores, 3 milliners, 6 shoe stores, 6 furniture stores, 1 furrier and 3 sports shops. At the wholesale level there were 10 produce dealers, 6 suppliers for grocers, 6 dealers for poultry, 4 outlets for drygoods, 4 outlets for feeds, 3 outlets for stationery, 3 outlets for hardware, 3 lumber suppliers and 2 outlets for confectionery. A comparative list for today would be of interest: just as the population has moved out of the downtown core, many of the businesses have moved as well and many of these relocations have placed the businesses outside of the municipal perimeter.

This movement has important implications for the city. Property taxation and the provision of sewer and water services are two of these, so important that we have discussed them elsewhere in separate chapters. But, there are others. Consider, for instance, that in 1955, Charlottetown had 18 miles of paved streets and 35 miles of concrete sidewalks. The statistics suggest most city streets were accompanied by sidewalks on one (if not both) sides of the street. This symbol of a pedestrian-oriented area is no longer a feature in many of the newer developments within the city and is a virtual luxury in many of the suburbs.

By 1973, the Royal Commission on Land Ownership and Land Use recognized that Charlottetown was unduly handicapped in its role as the capital of the province. Accordingly, in its Report, the Royal Commission stated, at pp. 73-5:

> Of much greater concern to the Commission is the Charlottetown urban area, the traditional focal point of Island life and government and a special place in historic and national terms. The essential character of its urban core is presently without the plans, the funds, or the necessary government structures to secure this special role. Development on the fringe of the city is further complicated by a six-way split in its municipal jurisdiction (four incorporated villages; Parkdale, Sherwood, Bunbury and Southport: two local improvement districts; West River and North River).
>
> To quote from the brief presented to the Commission by the City of Charlottetown:
>
> "The planning aspect of developing a land use policy to serve the Greater Charlottetown Urban Area is provided for in existing planning legislation. It is fully possible to create a vision for the best kind of urban environment for the Area; but, it is the implementation of any such land use policy which deserves, in the opinion of the Board, special consideration at this time.
>
> So many land use policies adopted at the local level stop short at traditional land use plans implemented by often highly legalistic bylaws and regulations. In most cases, land use plans simply confirm established land use patterns while making allowance for certain expansion of uses based on projected past trends. And, in most cases, these plans are "implemented" solely by zoning bylaws, subdivision regulations, and the like. Too frequently, at the regional level, the member units are left to administer their part of the plan and their own regulations independently. Most important of all, traditional plans of this sort seldom call for the spending of money because local governments are known always to be in the position of finding it ever more difficult to provide even basic services.
>
> Because money is in short supply, so are the management and technical capabilities which are needed to implement any integrated and farsighted land use policy for a regional urban community. *In the present situation, therefore, land use policies are inadequately backed with cash, and being so deprived they can be little more than regulatory, passive and exceedingly frustrating to everyone.*

> Money (or other assets, including land) is essential if any meaningful land use policy is to be implemented at the regional scale. And, besides money, some regional developmental mechanism, capable of undertaking certain actions independently from local government council interference, yet having local government representation, is needed."
>
> A plan for the redevelopment of the Charlottetown area is now in the final stages of preparation by consultants. Concurrently, a blueprint for a Charlottetown Area Development Agency, a cooperative development mechanism for municipal and developmental planning in the Charlottetown area, has been prepared and is under discussion by the various councils within the metropolitan area.
>
> However, the Commission agrees that no matter how able and excellent the plan and the agency may be, little is likely to be accomplished without a major infusion of funds, over and above those derived from the municipal tax base. There seems little doubt that these will have to come from federal and provincial sources.
>
> In the interest of sustaining the central and integral role of Charlottetown in the Island economy and way of life and to enable future development in keeping with the aesthetic and historical importance of its urban core, the Commission recommends that the City be considered for very substantial provincial financial assistance.
>
> Summerside presents a somewhat similar case but on a very much smaller scale. [Emphasis original.]

Accordingly, the 1973 Royal Commission recommended as follows:

> To sustain the central and integral role of Charlottetown in the Island economy and way of life, and to enable future development in keeping with the aesthetic and historical importance of its urban core, the City should be considered for very substantial financial assistance from the provincial government.

We are not prepared to examine the whole area of municipal financing to determine to what extent this recommendation was or was not implemented. What has become obvious from our investigation is that the existing property tax regime generates or exacerbates rivalries between municipal entities, particularly where those municipal corporations are adjacent to one another. While we explore this matter in more detail in our chapter on property taxation, it is apparent that the City of Charlottetown is caught in the vice of a no-win situation. The City has one of the highest municipal tax rates in the province: this is a disincentive to any business or resident seeking relocation into the urban area and is an equally compelling reason for those already in the City to move outside its boundaries. Either way, the tax base of the City is eroded. Yet, as both a city and a provincial capital, Charlottetown has standards it is expected to maintain and services it must and should provide. At the same time, adjacent communities are in a position where they may be able to minimize on services and standards since they and their residents can draw on the City or the Province for at least some of these services.

Aside from financial factors, there are other considerations. The growth in urbanization is a social trend that has continued unabated throughout the twentieth century and there are no indications it will cease or reverse in the twenty-first century. Fragmented jurisdictions at the municipal level have not only meant conflicts between units but have produced poor land use decisions. For example, a business that wants to locate on the fringe of a municipality may have many benefits and few (if any) disadvantages for the municipality in which the business would be located. On that basis, it is welcomed by the one jurisdiction with authority to allow, or disallow, its location. But the business may have very negative aspects as well - disadvantages that impinge primarily, or exclusively, on neighbouring municipalities who have no control over this development. The location of shopping centres in one municipality - or in a nearby unincorporated area - is one example of this type of difficulty to which we have directed special attention in another section. But this is by no means the only example. A business that generates a high volume of traffic is another possible instance, where the location is such that the traffic problems will arise largely in the municipality adjacent to the jurisdiction where the business itself is physically located. Another example is found where a municipality is prepared to have commercial development with noise or odours, while its adjacent municipality has a residential community nearby. In both of these examples, one municipality receives the benefits (through property taxes) while its neighbour bears the burden(s).

In the Charlottetown context, we have observed a number of land use decisions that have been made by adjoining municipalities and for their benefit at the expense of the capital city. Chief among these are land use decisions that have added to traffic congestion and detracted from the visual aesthetics of the main thoroughfares leading to the City. The flow of traffic on the Trans Canada Highway has been severely impeded by land use decisions in West Royalty allowing numerous commercial businesses to have access along a strip development. Further, West Royalty destroyed the residential character of North River Road by permitting it to become a commercial corridor. Until recently, the integrity of the Trans Canada in Southport and Bunbury has been maintained. Recent development in that area now produces alarming signs that it, too, shall become a strip development that mars the easy access of traffic to the capital and creates an aesthetic deterioration of the landscape. Approaching the capital from the Trans Canada Highway, as any traveller using the Wood Islands entry point likely would do, there is a vista of the city's skyline from across the Charlottetown Harbour with a wide expanse of open green space to accentuate the sweep of this view and few access points to impair the free flow of traffic. Development along this corridor threatens the image of the capital - but for each of the municipalities with power to make the necessary land use decisions, the corridor involved is a fringe area. While Parkdale and Sherwood have defined industrial parks, both show signs of transforming older residential neighbourhoods into commercial sectors along the most direct traffic routes into Charlottetown. And the trend is now moving further afield - into East Royalty, Hillsborough Park, Cornwall and North River. While these types of land use decisions impinge directly and indirectly on the capital of the Province, Charlottetown is quite powerless in the decision-making processes that allow the capital to be ringed in whatever fashion several adjacent - and competing - jurisdictions choose.

The chief example of the difficulties presented in this arrangement arise in regard to sewer and water. We have addressed this issue in a separate chapter. But we highlight the matter here by a few examples to show the absurdities of the present system. Consider, for example, waste disposal from Garden Province Meats in the Sherwood Industrial Park. The plant uses the waste treatment facility in the vicinity of Riverside Drive. By any logical assumption, the waste from Garden Province Meats would following a system that would run roughly a north/south axis. But, we understand this is not the case - that waste from the plant is piped from Sherwood west to West Royalty and thence, by a meandering route through various jurisdictions eventually makes its way to the treatment plant. Water, destined for usage by Charlottetown residents, flows through Parkdale, which does not use City water.

Numerous efforts have been made in the past to effect cooperation between Charlottetown and its adjoining municipalities. They have met with mixed results. While some cooperative ventures have come about, the challenge of reaching an agreement acceptable to a number of municipalities, each with its own agenda and self-interests, each with an existing list of assets and liabilities and with or without infrastructure, is herculean. Even when there have been "success" stories, we suggest the achievements have not been as cost-effective, efficient or rational as could be obtained in a unified jurisdiction.

There are, in our opinion, three alternatives we could suggest in terms of the Charlottetown situation: (1) retain the status quo; (2) create a regional, coordinating structure or some hybrid thereof; or (3) amalgamate Charlottetown and the adjacent municipalities.

The past performance of the status quo has not been an impressive one. It has produced a collection of small municipal units, each one doing "its own thing" through a patchwork of services and arrangements. In each one, the municipal administration is costing ratepayers by way of salaries and fees for administrators, accountants, lawyers, municipal office buildings, and the office costs associated with having such structure. Land use planning is fragmented. Decisions are not made in the best interests of the urban, capital area. There is competition for tax dollars and rivalry for commercial development that detracts from other important considerations. Inefficiencies in providing infrastructure and services cannot help but occur; the status quo is a recipe for continual perpetuation of these inefficiencies. Retention of the status quo contains no incentive to change.

The second option, that of a regional or coordinating structure, is not a formula for success. First of all, it introduces another layer of "government" into a system already overburdened with structures. Secondly, regional government is effective only if the regional body has sufficient power and clout to denude municipalities of their autonomy. Otherwise the regional body is little more than a vehicle to urge cooperation which can be no more effective than ad hoc cooperative efforts effected through goodwill and/or the dictates of joint municipal necessities. The option then is a rather meaningless one for the regional government concept is balanced on the horns of a dilemma: if the regional government is sufficiently strong to mandate results, then the role of the municipal units is of questionable value while, on the other hand, if the regional government is not able to mandate results, then it is little more than an unnecessary frill.

The third option, an amalgamation of units, is one for which we have had several precedents in this Province in matters unrelated to municipal government. The creation of the University of P.E.I. (in effect, an amalgamation of St. Dunstan's University and Prince of Wales College) and the later amalgamation of the Prince Edward Island Hospital and the Charlottetown Hospital to form the Queen Elizabeth Hospital were two major examples of unification. Both moves were not without controversy. Both required considerable time and effort to resolve a myriad of detail. Both were done to rationalize efficiencies, streamline the delivery of services and promote the economies of scale. Once accomplished, there has been no call for a reversion to have two institutions of higher education or two hospitals. We feel there are lessons to be learned from these moves.

One of the central messages from these earlier amalgamations lies in an area of intangible, unmeasurable factors. The controversies surrounding the amalgamations, particularly the first of these, was magnified in some measure by the longstanding traditions of the institutions. Public reaction to any status quo change is bound to be clothed in more than dollars-and-cents factors. Community amalgamations are no exception. Residents feel an attachment to their particular locale for emotional, psychological reasons. This is particularly so where the community is one of long-standing with traditional ties and a feeling of neighbourhood attachments. This factor means that residents may oppose any amalgamation proposal because they feel a sense of belonging to their particular municipality and not to Charlottetown.

However, the psychological dimension of any amalgamation plan means that the longer municipalities continue to experience separate identities, the more painful the amalgamation exercise will be and the louder the opposition will be raised, regardless of what financial or other reasoned arguments may be made in support of a unification plan. The municipalities adjacent to Charlottetown do not have long histories as separate municipal units. The most senior, Parkdale, was incorporated as a village in 1950. The majority were incorporated within the past two decades, as Table 1 below indicates:

TABLE 1

Municipality	Date of Incorporation
Charlottetown	1855
Sherwood	1960
Cornwall	1966
Bunbury	1969
Southport	1972
Parkdale (Town)	1973
North River	1974
Hillsborough Village	1976
East Royalty	1977
West Royalty	1980

We are of the view that amalgamation of the suburban areas is, sooner or later, inevitable. That has been the trend in a number of Maritime cities, a trend consistent with many urban areas throughout North America. The longer that the individual municipal units have to build upon their traditions and to enjoy their autonomy, the more contentious and disruptive an amalgamation will prove to be.

What areas should be included in such a unified jurisdiction? We considered a number of possible combinations but essentially there were two alternative scenarios. The first option would involve an amalgamation of the greater Charlottetown area. This would encompass the urban sector that encircles the present city boundaries. Essentially such an amalgamation would unify the ten municipalities enumerated in Table 1. There are also variations within this option. For example, Bunbury and Southport could be included while Cornwall and North River are not (or vice versa). All or parts of other municipal units within such a circle could be included or excluded.

The second option is essentially an amalgamation of Charlottetown, Sherwood, Parkdale, Hillsborough Village, East Royalty and West Royalty with a few modification. This model is based to two considerations. First of all, we are of the view that, wherever possible, natural geographical boundaries should be used as a demarcation between one jurisdiction and another. The Hillsborough River, the York River and the Charlottetown Harbour provides such a boundary. Secondly, two of the major and most essential services provided or needed in these municipal areas are sewer and water. These are the services for which carefully planned and logical coordination of resources and infrastructure are needed in the immediate, short-term future. Wise and visionary decision-making, free from competing rivalries and parochial interests are needed. The resource base and skeletal infrastructure in terms of these needs are geographically located in an area that excludes those municipal units lying on the opposite shores of these natural boundaries.

In recommending an amalgamation of this area, we have given much thought to a suitable boundary. Although there are natural water boundaries for much of the area, the balance of the area is not so readily defined by natural features. However, we are of the opinion that the northern portion of the capital should include all of the lands that form part of the Charlottetown airport. The eastern border we feel should be Route 25 (the York Road) and a straight line from there to Hillsborough River. The northern boundary to the west of the airport is equally difficult to establish from the standpoint of geographical features. One possibility is that of the existing boundary for Sherwood and West Royalty, a boundary which uses the Sherwood Road, a portion of the Lower Malpeque and then a rather zagged boundary line to the North River.

At the present time, the area around the Queen Elizabeth Hospital is not within any municipality. This area would be included in the urban area for the enlarged capital city.

We would anticipate that such a proposal requires many details to be worked out. With so much infrastructure already in place for various services, it may be cost effective, at least for the short-term future, to have a decentralized regime in the provision of some of these services. For example, several of the six affected municipalities have individual fire departments with fire protection provided essentially on a volunteer basis. Centralization of fire protection would not be cost effective if it required new facilities and a single paid fire department. But there is no apparent reason why an expanded city cannot have fire protection continue on the present basis with "neighbourhood" fire units: instead of several fire departments each reporting to a single municipal council, there could be several fire companies, each reporting to the same municipal council. But the centralized administration would be available for more effective coordination and economies of scale in such areas as purchasing supplies and new equipment.

The decision to amalgamate municipalities is the type of decision that may come about in one of two ways. One method is to allow municipal units to cooperate, to come to agreements and, hopefully, eventually, to decide unification is the best course of action. This method was what was commended to us by the Greater Charlottetown Area Chamber of Commerce. While there may be examples of this approach elsewhere, we have not located any instances in North America where a voluntary amalgamation of municipal units has occurred solely on the basis of locally-based cooperation and goodwill. Municipal marriages that have come about by apparent voluntary means, on examination, have occurred either in response to a crisis or as a solution to problems that could not be solved by the individual entities acting alone. The second method is more draconian but appears to be the only one of practical applicability, in the absence of any crises that would force a merger. It involves a policy decision at the provincial level, giving the affected parties ample opportunity and resources to work out all of the details of the merger but leaving no doubt that the end result is an amalgamation and that is the goal that must be attained.

While the first method is the preferred one in an ideal world, we are pessimistic that it would result in nothing more than much discussion. By the time agreements have been reached, the major players are apt to have changed and any momentum on consensus is lost as new officials must become acquainted with background information. If the purely cooperative route had been used to effect the merger of Prince of Wales College and St. Dunstan's University or the more recent hospital amalgamations, we speculate that negotiations on either of these mergers would continue to be recurring themes in the media well into the twenty-first century. Municipal amalgamation is an issue that calls for provincial leadership, for the province to say, in effect, this will be done by such-and-such a time and, if the details on the amalgamation are not completed by agreements among the municipalities by that deadline, then the details will be supplied by the province. To use the phraseology of the labour movement, "binding arbitration" needs to be imposed.

What amounts to a reasonable time in such matters? We are of the view that a brief time period is to be preferred to a long one; the more time that elapses between the time of the policy determination and the deadline for the merger, the less pressure there is to get the task done. On the other hand, there should be a timetable that gives all parties sufficient opportunity to work out the myriad of details. Within these parameters, anything less than one year would not seem appropriate but more than two years would give the parties too much opportunity to deflect and procrastinate on the objective. A timeframe of approximately 18 months might be suitable. This would allow the province the opportunity to introduce any necessary legislative changes in its spring session of 1992.

Accordingly, we recommend

- **THAT the urban area for the capital of the province be placed under the jurisdiction of a single municipality by appropriate legislative amendments enacted in 1992 to enlarge the boundaries of the City of Charlottetown to include as a minimum, the suburbs of Sherwood, Parkdale, East Royalty, Hillsborough Village and West Royalty as well as any incorporated or unincorporated areas necessary to ensure the new capital area includes the urban core bounded by the York and Hillsborough Rivers and that, in the interim, the province assist the six municipal units in negotiating the details of whatever transitional provisions are necessary to achieve this unification.**

Hand in glove with this forced marriage, are certain land use provisions that we consider to be essential if the capital of the province is to avoid the pitfalls of the past. A central requirement is that the "new Charlottetown" must have a visionary land use plan, one which is designed not only on existing use or short-term projections but which also provides some farsighted approach to what the city may be not just in the twenty-first century but also in the *twenty-second century.*

One of the best features of the present City of Charlottetown is its retention of open spaces and green areas, both in the downtown core and in the more recently settled areas. Nevertheless, there has been a determined thrust over the years to reduce the amount of open spaces. The establishment of the Farmers Market and the construction of several federal government structures along University Avenue have slowly eroded the open acreages of the Experimental Farm. This theme is now being repeated by the developing density in and around the University campus, just beyond the city's boundaries. If the city's forefathers had been equally shortsighted, the open squares of the downtown core would now be covered in asphalt or buildings. It is essential that any land use plan for an expanded capital area include generous sections of open spaces and green areas, including land specifically designated solely for agricultural use.

Secondly, it is essential that once the land use plan has been determined, it must be difficult to alter on the basis of spontaneous, *ad hoc* decisions. Good land use planning requires flexibility, but flexibility should mean the entire plan is subject to periodic review at stated time intervals. Flexibility should not mean the plan can be altered to accommodate individual wishes each time these arise. Plan adjustments between revisionary stages should be permitted only on an annual or semi-annual basis, when the effect of an accumulation of requests can be considered on a cumulative basis.

A land use plan for a new capital city calls for greater enhancement of the heritage component, particularly in the core area of old Charlottetown. While some progress has been made in the preservation of Island heritage, particularly in this area, we feel much more is called for and the province must become a player in this arena. Elsewhere in this report, we considered historical preservation in a province-wide context. That message is particularly important in Charlottetown. Notwithstanding the Provincial Archives and the Heritage Foundation, there is no where in the urban area where the public can view the artifacts of ordinary Island living from past eras: there are no "house museums" nor is there a provincial museum.

It is also important that a land use plan for an amalgamated Charlottetown make provision for future growth in a number of sectors. While this is most obvious in many aspects, one area to which our attention was specifically directed was that of "heavy industry". The Greater Charlottetown Area Chamber of Commerce directed our attention to the need for what was termed "a heavy industry (rough yard) industrial park" and we endorse the inclusion of such an area in a comprehensive land use plan for the enlarged municipal unit.

Finally, we would expect that any land use plan for the future would encompass an examination of the transportation needs of the municipality. It is essential that the capital city of the province be a pedestrian-friendly city. All too often, modern urban centres have allowed the construction of buildings and highways that have taken into account only the needs of automobiles and drivers. While traffic considerations as they relate to motorists are important, they cannot be allowed to dominate urban land planning to the exclusion of other users. For example, commercial sectors should be encouraged to provide for parking behind buildings, rather than in front of them. Buildings with few or no windows at the street level should be discouraged, since these have been identified by professional planners in many urban areas as promoting the image of an environment unfriendly to pedestrians.

In addition to land use decisions and policies that reflect the needs of both motorists and pedestrians, however, both municipal and provincial levels of government must address the lack of public transportation in the capital city. As we have indicated elsewhere, transportation factors heavily in good land use planning. The population data we explored earlier for the City of Charlottetown showed that the residents of the city are now far more disbursed geographically than they were 35 years ago. While the population total was relatively unchanged, the same cannot be said for the characteristics of that population: all indicators suggest that the residents of Charlottetown are aging. More and more senior citizens are moving into the existing capital area, particularly the downtown core. These citizens require transportation to health facilities and to shopping and many of these services have moved further afield thanks in no small way to provincial policies and decisions. At the same time, public projects for low-cost housing have been directed in many areas far removed from essential services so that Islanders who cannot afford private transportation are at a disadvantage in accessing job opportunities, health services, recreational facilities and other necessities and amenities. An amalgamation of the City of Charlottetown with other jurisdictions will not alter the realities that already exist but a centralized urban administration may provide more feasible means to grapple with these realities.

Accordingly, we recommend

- **THAT the enlarged capital jurisdiction have a land use plan with sufficient visionary outlook to retain ample open space, greenery zones and agricultural use areas for the enjoyment of future generations; that it contain a greater enhancement of the heritage component, that it provide for future urban growth in all sectors of land use including provision for a heavy industry (rough yard) industrial park, and that it provide for future urban transportation needs, including pedestrian-oriented components and an examination of public transportation needs.**

The unification of Charlottetown, Parkdale, Sherwood, Hillsborough Village, East Royalty and West Royalty will not realize its full potential if the adjacent areas can continue to be "tax havens" or otherwise attract new growth to the detriment of the capital. Not only will such future expansion defeat, at least in part, some of the benefits that can otherwise be attained from municipal amalgamation, but such growth would only generate new problems. Unregulated growth to the east of Charlottetown would put new pressures on the chief road system to Kings County and/or would impinge on the Winter River watershed area that is vital to the city's water supply (depending on the direction of such growth).

Unregulated growth on the opposite side of the Hillsborough River would produce further pressure for another bridge at a time when the Province has yet to determine how it can best effect repairs to the existing structure. Similarly, unregulated growth on the west side of the York River would exacerbate the need for greater highway access over a waterway which has been plagued with unresolved difficulties. Moreover, unregulated growth in these areas invites further deterioration of the landscape around the entry points to the City. It is essential that the amalgamation of the six municipal units does not serve simply to push existing problems further afield.

Elsewhere in this report we have recommended means to avoid further magnification of such problems; limited access to major highways, growth management standards for both incorporated and unincorporated areas, land use controls for agricultural areas are all among the available tools. Provisions such as these must be strictly applied to the area that rings the capital and, in particular, stringent growth management controls must be imposed on a buffer zone outside the perimeter boundary of the new capital.

We have considered at some length the size of an applicable buffer zone and we have reached the conclusion that it must be a minimum of 5 miles from the nearest point of the boundary for the new capital and that a distance of up to 10 miles may be preferable. We chose such a range because we were particularly anxious to avoid ribbon development or new clusters of residential growth outside municipal boundaries within easy commuting distance of the city.

We are of the view that such a buffer zone should be implemented for a fixed period of time and, somewhat arbitrarily, selected 10 years as an appropriate timespan for such a "freeze". This would allow the enlarged capital city ample opportunity to plan and define its future and put these plans into effect. As the termination date for the moratorium approaches, the results of the whole concept and the municipal amalgamation could then be re-evaluated and a fresh decision on continuation, cessation or modification of the buffer zone could be made.

One of the central goals for such a buffer zone would be to preserve insofar as possible the existing characteristics of areas immediately adjacent to the enlarged capital city. Rural portions of this area must retain their countryside appearance. Municipalities that lie within the buffer zone must have some limited flexibility for sustained activities but they must not be centers for new explosions of expansion. To effect such goals we would propose a total moratorium on some types of development and a partial one on other types, combined with stringent highway access limitations for all major routes into the urban core.

To accomplish this, the essential elements of a land use plan in such a buffer zone would direct any new development to serviced lots in incorporated areas with a few limited exceptions. The list of exceptions we would suggest would be short: replacement units for housing destroyed by fire or other disaster, providing such replacement has been commenced within a one-year period, additional structures for agricultural operations and limited expansion to small-scale commercial developments already in operation. Within any incorporated areas that lie in the buffer zone, development must be controlled and we would suggest two measures to achieve this goal. Residential housing starts should be confined to serviced lots and the amount of new or expansionary development should be limited to a fixed annual amount based on past growth patterns and preservation of a sustained level of municipal activity. This amount could be controlled either by putting a ceiling on the number of building permits available each year in these municipalities. (One example of this type of controlled growth is outlined in our discussion on Hartford, Maine, found in Appendix C, in Volume II.) Alternatively, a fixed-dollar amount for new or expansionary development in each municipality could be targetted on an annual basis. A total moratorium on *all* major developments should be imposed on *all* areas within the buffer zone. Coupled with these measures, there must be stringent highway access limitations for all major routes into the urban area of the capital. These routes would include the Trans Canada Highway along with Route 2 (between Charlottetown and Hunter River and between Charlottetown and Mount Stewart) and the Brackley Point Road. In some locales, presently existing access to these highways can be modified, particularly where a property enjoys an alternative access to another roadway or where a property now utilizes two or more access points to the highway. Where such modifications are possible they should be undertaken.

Accordingly, we recommend

- **THAT the area around the enlarged capital city be designated as a buffer zone extending at least 5 miles and preferably 10 miles from the nearest urban boundary and that there be stringent growth management controls imposed in this buffer area, for a ten-year period including a total moratorium on all major developments within the buffer zone; a moratorium on all residential housing starts except on serviced lots in municipally-incorporated areas with the exceptions of replacement units for housing that has been destroyed by fire or other disasters, providing such replacement has been commenced within a one-year period; a prescribed limit to the number of housing starts that may be undertaken in each year in municipallyincorporated areas in the buffer zone; a limit on the expansion permitted existing developments and new small-scale developments in the buffer zone, with the exception of additional structures for agricultural operations; and stringent highway access limitations for all major routes into the urban area, include Routes 1 (Trans Canada Highway), 2 (Hunter River to Charlottetown and Mount Stewart to Charlottetown) and 15 (Brackley Point Road), accompanied by access modifications for presently existing accesses to these highways.**

Chapter 9

CAVENDISH

During the course of our public hearings, we heard a number of presentations that expressed concerns about the uncontrolled use of land for tourist development in the Cavendish area, the effects that were being generated as a result (both in Cavendish and elsewhere) and the deterioration of the landscape arising from the unfettered establishment of "inappropriate" attractions in the area. Public opinion on a solution, however, was divided. For some, the Cavendish situation had already reached (or passed) the stage where steps could be taken to redeem the ruin already in place. Others were more optimistic but they stressed the urgency of prompt and stringent measures. These divergent streams of opinion were further modified by two other, nonreconcilable positions: there were those who appeared willing to accept a policy that would focus tourism development in that portion of the North Shore so that the remainder of the Province could, as much as possible, escape the adverse consequences of tourism and there were those who urged that the benefits of tourism be widely dispersed. No one-to-one correlation existed in respect to those who felt Cavendish was/was not a "lost cause" and those who wanted either benefits dispersed or disadvantages contained. At the time these presentations were being made to us, it was well known that a planning exercise was underway in the Cavendish area but the results of that project had yet to be released.

An "Official Plan for the Comprehensive Development of the Cavendish Planning Area" was prepared by Coopers & Lybrand and submitted to the Cavendish Area Planning Board later in 1989 and, according to press reports, this document was forwarded to the Province.

The plan included a "Framework for Plan Implementation" at pp. 54-56. The "Background" portion of this discussion, found at p. 54, stated as follows:

> Four specific options have been considered for implementation of the Cavendish Area Official Plan. They are listed as follows:
>
> - establishment of a plan implementation program within a provincial department;
> - promotion of a municipal corporation;
> - establishment of an area industrial commission; and
> - creation of a corporate Crown authority.
>
> The final option of establishing a corporate Crown authority has emerged as the preferred course of action. The other three were judged to be inappropriate for the following reasons:
>
> - The first option would involve implementing the Plan directly through a provincial government department. This option is seen as somewhat inadequate because of the desire of local residents and property owners to be involved in the implementation process.
> - The option involving municipal incorporation is inappropriate because of the sparse population of the Planning Area during the off-season.

- **The industrial commission option did not prove possible because of statutory limitations. Where there is no municipality, an industrial commission cannot be formed.**
- **In the final analysis, the implementation of the Plan calls for an authority which is essentially different from a municipality. Due to the Planning Area's vital role in tourism, its unique pattern of land use activities, and the complexity and significance of the Plan, a corporate Crown authority is considered the most appropriate for plan implementation purposes.**

Subsequently, the Minister of Community and Cultural Affairs introduced Bill No. 44 ("An Act to Amend the Municipalities Act") into the Legislative Assembly during the 2nd Session of the 58th General Assembly.

We consider it most inappropriate that Government, having appointed a Royal Commission to inquire into and report on a multitude of issues relating to land ownership, land use and the landscape, including "all existing legislation pertaining to land use, particularly that relating to ownership by non-residents", responded to the proposal made by the Cavendish Area Planning Board during the tenure of the Royal Commission.

Bill No. 44 called for an amendment to the *Municipalities Act*, R.S.P.E.I. 1988, cap. R-13 which would provide as follows:

> 8.1 (1) In this section
>
> (a) "resort area" means an area in which
>
> (i) tourism is the most important industry,
>
> (ii) many of the business enterprises are operated on a seasonal basis,
>
> (iii) many of the residents are seasonal residents;
>
> (b) "temporary resident" means a landowner in a resort area who is a seasonal resident or the operator of a business enterprise in the area or a farmer who lives outside the area but owns and farms land in the area.
>
> (2) Where the Lieutenant Governor in Council determines an area to be a resort area, the Minister, may, on receipt of a petition under section 5 signed by at least thirty persons of whom
>
> (a) at least fifteen are residents of the area;
>
> (b) at least fifteen are temporary residents,
>
> call a public meeting of the residents and temporary residents of the area to discuss the matters contained in the petition and to determine if there is public support therefor.
>
> (3) After consideration of the petition and the recommendation of the Minister, the Lieutenant Governor in Council may, by order published in the Gazette, incorporate the inhabitants of the area as a resort municipality.
>
> (4) The provisions of this Act apply to a resort municipality with the following modifications:
>
> (a) section 7 does not apply;

(b) any reference to "resident" includes a "temporary resident" and any qualifying period applicable to a resident does not apply to a temporary resident;

(c) the reference in subsection 15(5) to January 1 shall be deemed to be a reference to September 1;

(d) the reference in clause 48(1)(a) to November and in subsection 55(2) to March shall be deemed to be a reference to August;

(e) a temporary resident who is elected to office in a resort municipality is disqualified to hold office in any other municipality.

Prior to the enactment of Bill No. 44, an amendment was added so that Section 15(1.1) would be inserted in the *Municipalities Act* as well. This provision stated: "In a resort municipality at least two of the councillors shall be persons who are not temporary residents as defined in clause 8.1(1)(b)."

We consider these provisions of Bill No. 44 to be an illconceived response to the Cavendish situation. It represents a prime example of an impulsive and "knee-jerk" reaction, designed only for one situation but with potential consequences for others. As such, it typifies one of the central problems to land use planning in the Province.

On what basis do we use such "fighting words"? Let us recount the major deficiencies we feel are apparent in this legislation.

First of all, we have already identified what we consider to be a fundamental problem in land use planning and implementation. There are too many fragmented structures, too much complexity, too many intricacies. The whole municipal framework is one that is a patchwork with more and more patches being added, each one a little cover for a specific hole designed so it can be generally used for other future holes in the overall fabric. Now Bill 44 meant we have in our municipal structures not only towns, villages and community improvement committees (interlaced with distinctions between "municipalities", "communities" and "towns") and, of course, - excluding the two most populated centres in the Province - we are also to have "resort areas" (or "resort municipalities".)

Secondly, the "resort area" introduces the "temporary resident" as being an integral voice in the affairs of this type of municipal corporation. A temporary resident, in the words of Bill 44 "means a landowner in a resort area who is a seasonal resident or the operator of a business enterprise in the area or a farmer who lives outside the area but owns and farms land in the area." This has adverse consequences in the context of the "resort area" itself, in the context of other municipalities and in the context of the Province as a whole.

With respect to the resort area, Bill 44 provides that both "residents" and "temporary residents" must be included in petitioning for a public meeting "to discuss" matters which are contained in the petition. After that, there are no safeguards for control by the permanent residents of the area. Only a last minute amendment ensured that all of the elected officials could not be temporary residents, but the legislation still enables temporary residents and/or landowners who do not reside in Cavendish to control the resort area. A resident of the resort area who has resided in the community on a full-time basis for the past eleven months would be ineligible for election under the provisions of Section 15(4)(c) of the *Municipalities Act* but the "operator of a business enterprise" who neither owns land or has resided in the community for a single day would be eligible. Quite conceivably, the election of officials could encompass a slate controlled by out-of-province residents!

The potential problems in this type of arrangement are well known in other jurisdictions. Peter Gorrie, for example, described problems in "Muskoka: Growing Pains in Cottage Country" (*Canadian Geographic*, vol. 109, no. 3, June/July, 1989). In the Muskoka area of Ontario, tourism dates back to the time of Confederation and gained an international reputation by the turn of the century. "But", said Gorrie at p. 19, "with the demise of the grand hotels and the subsequent scarring of the natural beauty by uncontrolled development, the region lost its international reputation as a resort par excellence. In 1985, a national tourism survey noted what locals had known for years: Muskoka was no longer a factor in attracting visitors to Ontario." Development has resulted in numerous environmental problems and it has pushed prices for land and property taxes to the point where persons of modest means are now being forced to sell, Gorrie maintained. And who is now going to determine the future of the area? Listen to the words of Gorrie at pp. 21-22:

> The response of the District Municipality of Muskoka has been to devise a regional plan that spells out where development may and may not occur. It is based on the assumption that people are going to keep coming, says district chief planner Bob List, so it's best to put them where they can do the least damage to the environment.
>
> Under the plan, which still must be approved by the province, major resorts such as Deerhurst would be limited to the locales (one near each of the three towns) where they are already underway or proposed, and in four remote areas still to be announced. Buildings of up to eight storeys would be allowed in the towns as well.
>
> Critics are convinced this is too much development. "It could end up looking like Miami Beach or Cancun," says Cyril Fry, a 62-year-old retired teacher in Gravenhurst. And cottagers are worried that the "remote" resort sites will be located near their retreats.
>
> *The Muskoka Lakes Association will be a powerful force in the coming confrontations.* Most of its members are young, urban professionals, skilled at arguing their cases before politicians and regulatory agencies, and with plenty of money to finance the fight. *They also dominate the voters' lists in their cottage communities to such an extent that some all-candidates meetings for local elections, always in late fall, are held in Toronto.*
>
> Association president Bill Clark admits *the group has a reputation for selfishness, for saying "we've got a good thing going; let's keep the club to ourselves". But he insists it assesses every project on its merits and is mainly interested in getting consistent rules for development.*
>
> The municipality's Bob List retorts that is just so much double-talk, that Muskoka is engaged in a battle between competing dreams. "The dream of lakeside residents seems to be, they have a cottage and they don't want anyone else to get one, or at least not close to them." They put no importance on economic growth, he says. He

> also suggests most visitors no longer seek wilderness retreats in Muskoka. They want comfort, entertainment, good food and sports facilities, and that is why they will flock to places like Deerhurst.
>
> Dissension over development will intensify. Pressure to expand will grow. Resistance will get stronger. In municipal elections last fall, cottagers elected several supporters of their views, and some local councils have served notice they will oppose large projects.
>
> But the push for change appears to be irresistible with so many people wanting a piece of Muskoka. *The question remaining is whether change can be managed in a way that saves enough of the qualities that make it such a special place.* [Emphasis added.]

By specifying that the "council" of the resort area is to have its annual meeting in August, Bill 44 at least ensures that the annual meeting for the resort area is likely to be held in the geographical confines of the community it purports to govern but any subsequent meetings for the next several months could conceivably be held in downtown Charlottetown - or Toronto - rather than in the resort area.

We have earlier indicated that we felt Bill 44 had adverse consequences for other municipalities and for the province itself. In terms of other municipalities, we feel that Bill 44 creates anomalies that are not justifiable.

Under the provisions of the *Municipalities Act*, neither business operators nor landowners are given any voice in the municipal affairs of municipalities unless they are "ordinarily resident" within the boundaries of the municipality, to use the phraseology employed in the definition of a "resident" in Section 1(f) of that legislation. Persons who have a year-round vested interest in the community cannot vote in municipal elections nor can they serve on municipal councils unless they are long-term residents. Indeed, the provisions of Section 44(1) require that "residents", not property owners, are the sole group to approve borrowing money for capital expenditures, even though the chief source of municipal revenue is based solely on property taxation.

Bill 44 has adverse consequences for the province in two ways. First, it creates a bad precedent. The analogies between resident and "temporary resident" in a resort area and other municipalities is just one example of this precedent issue. A second, equally critical, dimension is the example it sets for other potential "resort areas" in many of the summer cottage subdivisions in the province.

This, it would seem, is totally contrary to land ownership legislation that is grounded in the presumption that non-resident ownership must be controlled. Why have measures aimed at controlling land ownership by non-residents if those nonresidents who are allowed to own land can participate in or even control certain areas of the province using a residency requirement that is more relaxed than what year-round residents face in other municipal areas?

We would be more specific on our criticisms of Bill No. 44 if we knew what powers the province intended to give to "resort areas". Whether by accident or design, that becomes a difficult puzzle to fathom. Although Section 8.1(4) provides that "[t]he provisions of this Act apply to a resort municipality with the following modifications..." (none of which refer to municipal powers), there is nothing in Bill 44 to indicate whether a resort area would have the municipal powers which Part VIII of the *Municipalities Act* accords to a town or village in Section 30 or to a community improvement committee in Section 31. Since Bill No. 44 does not amend Section 32 of the *Municipalities Act* to include Section 8.1, we are of the view that Bill No. 44 is not drafted in terms that would give the resort area the legal right to provide *any* services. Possibly the intent of Bill No. 44 was to enable a "resort municipality" (as the "resort area" is called in portions of Bill No. 44) to have only the planning powers accorded to a "municipality" under the *Planning Act,* R.S.P.E.I. 1988, cap. P-8. If this is so, it is open to question whether Bill No. 44 achieved this result, since Section 8.1(1)(4) makes specific reference solely to the *Municipalities Act*. At the same time, references in the *Planning Act* to a "municipality", linked back to the definition of "municipality" in the *Municipalities Act*, fail to include the concept of a "resort municipality". Once more we have a prime example of confusion that is generated by hasty provisions whose meaning and intent can be determined with any degree of certainty only by those originally party to the measures or, ultimately, to the judge called upon to decide what was intended and, therefore, what is to be the actual law applicable to the matter.

Even without knowing what Bill No. 44 was meant to do, we are prepared to argue there are other adverse consequences for the province that arise from Bill 44 and which have their origins in the Cavendish situation specifically. The importance of Cavendish to the province as a whole is evident. It was not ignored in the Official Plan prepared by Coopers & Lybrand, where, at p. 4, it was noted:

> The National Park, the mystique of Cavendish created by Lucy Maud Montgomery, and the traditions of an agricultural community have enhanced the image and character of the Planning Area.
>
> Signs of improperly planned development are beginning to upset the balance and beauty of the Planning Area's natural environment.
>
> The Exit Survey conducted by the Prince Edward Island Department of Tourism and Parks estimated that *520,000 tourists - over four times the island's permanent population - visited Prince Edward Island during the May-October period of 1988.*
>
> According to the recent Exit Survey, approximately 65% of the tourist population visit the Planning Area at some point during their visit to Prince Edward Island. Using this figure *as an order of magnitude and factoring in estimates of "Islander" visits to the Planning Area, it is estimated that approximately 400,000 tourists visit the Planning Area during the tourist season. With a permanent resident population of 200 people, this indicates that the population swells to over 2,000 times its normal level.* [Emphasis added.]

The impact of Cavendish in relation to the tourism industry was minimized in this passage. The 1988 Tourism Exit Survey was qualified to indicate it included only air and auto visitation during the stated time interval. When other modes of travel were included, the Department of Tourism and Parks maintained the "total visitation to the Province during this period actually exceeds the 715,000 mark." The Exit Survey also indicated that

24.5% of visitors stayed overnight in the Cavendish area, that 17.3% of visitors stayed overnight exclusively in the Cavendish area and that 34.1% of visitors participated in an activity (but did not stay overnight) in the Cavendish area. These statistical profiles give no indication of the level of in-province usage by Islanders who contribute to the summer economy of the Cavendish area. Nor do they identify special market niches in relation to the Cavendish area, so there is not indication, for instance, of the role the Cavendish area plays in attracting Japanese tourists. One indicator, however, is the data in the Exit Survey that correlates the regions of the province that visitors (by air and auto) travel through in relation to the general place of origin of the visitors. An examination of this data shows that tourist parties from Nova Scotia (42.0%), New Brunswick (37.2%) and Quebec (57.5%) are less apt to travel through Cavendish than tourist parties from Ontario (67.0%), Newfoundland (78.0%) and other Canadian provinces (77.5%). New England parties (71.9%) and other U.S.A. parties (77.7%) are more apt to travel through Cavendish than are tourism parties from many parts of Canada, while tourist parties from other countires (87.2%) are very likely to undertake a visit to Cavendish. The importance of these findings in relation to Island tourism becomes particularly evident when the data on tourism expenditures are examined, for it is those visitors from origins that record the highest average expenditures on a per-person-per-day basis who are among those most apt to visit the Cavendish area.

Simply put, the Cavendish area is too vital to the Island's tourism industry to allow its future to be determined by the "temporary residents" of the geographical area. Decisions that affect the entire province emanate from decisions made about the Cavendish area. Repercussions from land use decisions in Cavendish have an enormous spill-over effect on adjacent north shore areas, on Borden and Wood Islands, on Charlottetown and Summerside, and on the future evolution of tourism in communities already tourist-oriented or seeking tourist development from one end of the province to the other.

The "Framework for Plan Implementation", proposed by the Coopers & Lybrand report, outlined four options for the Cavendish area. The municipal incorporation option was rejected on grounds of the "sparse population of the Planning Area during the offseason". However, the report referred to a permanent resident population of 200 people. We note that this would indicate Cavendish has a permanent population in *excess* of the permanent population in 11 of the incorporated municipalities, five of which are villages (Bedeque, Central Bedeque, St. Louis, Tyne Valley and Victoria) and 6 of which are community improvement committees (Bonshaw, Central Lot 16, Darlington, Lorne Valley, Union Road and Winsloe South). Clearly, there was no impediment to municipal incorporation other than the issue of where control over the area would lie.

Without the "resort area" or "resort municipality" concept, Cavendish is not without options to have a structural framework for planning. Even with the abolition of community improvement committees, Cavendish can incorporate as a village or become part of the North Rustico municipal unit. Input from seasonal residents and/or others with intersts in the area can be effected though advisory committees. Alternatively, the area could continue under the jurisdiction of the province in its municipal capacity in relation to unincorporated areas. Incorporation of a private corporation to provide utility services to those areas in immediate need of centralized sewer and water utilities is an option that was not cited as a structural framework useful to address this problem.

In light of these considerations, we have no hesitation in stating that we recommend

- **THAT the *Municipalities Act* be amended to repeal the concept of "resort area" or "resort municipality".**

The Coopers & Lybrand "Official Plan for the Comprehensive Development of the Cavendish Planning Area" is a document that deserves both "bouquets and brickbats". The document is an impressive one, encompassing the features of a planning proposal we feel are essentials to any good planning exercise: it is a self-contained package with ample, comprehensible text and maps. It explores many facets of land use in the area, defines problems, considers alternative solutions and examines untapped potential for the area. In summary it is a masterful, professional piece of workmanship that serves as an excellent model for what a planning exercise should strive to produce by way of documentation in developing a plan.

Our criticisms of the Official Plan center on a number of concerns we have about the substantive conclusions reached in the plan, conclusions that in no way detract from the excellence in the quality of the preparatory workmanship. But these conclusions do reflect, in a very major way, the vested and self interests of those providing the substantive input into the plan's recommendations, the unresolved conflicts that are projected for resolution in favour of one sector over another and the inherent divergencies between the long-term public interest of the province as a whole and the vested interests of the landowners in the specific area.

Our concerns can best be identified by looking at some sections of the document itself.

Central to our concern is that the plan exemplifies an attempt to allow all those with vested interests to "have their cake and eat it too".

We find it is ironic to observe this statement, at page 3 of the Plan: "Exhibiting characteristics similar to other seasonal tourism areas such as New England's Cape Cod and Martha's Vineyard, the Planning Area experiences a dramatic influx of visitors over a short period of time.". The irony lies not in the statement itself - which is quite accurate - but in the choice of comparative examples: Cape Cod and Martha's Vineyard. As Commissioners, we have some first-hand knowledge of land use planning in Cape Cod. (Our observations in that regard have been noted in some detail in Volume II, Appendix C.) While we did not visit Martha's Vineyard, we obtained documents regarding their land planning regime. Although Cape Cod and Martha's Vineyard can be lumped together as examples of tourist areas with a seasonal influx that create problems, they have not been soul mates in their approach to land use planning.

Essentially, Martha's Vineyard and the neighbouring island of Nantucket have adopted high quality, stringent, regulatory controls on land use in order to promote orderly, managed growth and to curb unplanned development. Standards are detailed and enforced to *preserve* the features that have made these islands treasured tourist destinations. We understand that regulatory controls extend to the designation of acceptable colours and types of siding that may be used on the exteriors of homes and other buildings. Enforcement procedures are sufficiently rigorous that the most celebrated property owner, Jacqueline Kennedy Onassis, was required to modify a silo structure on a new barn when it was found to be three feet in excess of height limitations for new structures!

In contrast, there is Cape Cod where, until some three years ago, growth and development were pushed. Planning measures lacked teeth. The public will favoured the unfettered dynamics of the marketplace. Traffic congestion, conflicts arising from land usage that mirrored differing objectives and lifestyles, environmental degradation - all were recognized as problems, but problems to be solved within a freedom to allow the dictates of market forces to prevail. It was only when water quality and quantity erupted as serious concerns that Cape Cod realized the fallacy of the past. While land use planners and other officials we met in Cape Cod expressed optimism that the new public attitude, combined with official support, would allow the situation to be "turned around", other planners in New England were less sanguine. Cape Cod, we were told, was a "lost cause" that no amount of planning and regulation could redeem.

Cavendish is, in this respect, Cape Cod in microcosm. Whether it is beyond redemption or not is subjectively answered, depending on individual perception. What is apparent is that the crisis expressed to us in presentation after presentation at our hearings is not recognized by those who have vested interests in maximizing their personal financial gain. They still opt for unfettered control based on market forces.

The handwriting now on the wall has been there for some time but the province has failed to heed the message. Consider, for instance, these passages found at pages 18 and 25 of the "Executive Summary" for the "Tourist Impact Study for Prince Edward Island", prepared by Abt Associates Inc. in 1976:

> The most important recommendation of this study is that *a comprehensive land use policy should be developed to guide future growth in the tourist sector. Moreover, responsibility for implementing and controlling this policy should be placed in a responsive body with authority to act on matters affecting tourism growth.* The experiences of Cape Cod, Vermont and Martha's Vineyard reinforce the importance of this step to Prince Edward Island. The jumble of strip development and environmental damage in too many of the beach towns on Cape Cod should be convincing proof that uncontrolled growth or growth left to the control of individual communities is undesirable. Decisions regarding the body within which land use policy authority is vested should naturally result from the interactive process of concerned Islanders, groups and agencies.
>
> Adoption of comprehensive planning and accompanying guidelines upon property development will probably not be accepted easily by many Island residents. Discussions with Island officials and interest groups reinforce the impressions received from land use planning documents - particularly *The First Report of the Land Use Commission to Executive Council* - that there is a gap between what is urged by professional planners and what will be accepted by the public. Whatever mechanisms and policies are considered, they must achieve a balance between the community benefits of planned growth and the property rights and independent authority of individual landowners. Yet, without some comprehensive policy, Prince Edward Island runs the risk of undesirable growth and damage to the very natural assets which make it an attractive place to live and visit. [Emphasis original.]
>
> ……
>
> A feasible strategy may be to incorporate the desirable redistribution objectives as part of a more comprehensive tourism development/land use plan for the Island. It

> is clear that totally unregulated growth will, under any set of assumptions, eventually produce conditions which Islanders - whatever their views of tourism - will find intolerable. Some sensitive set of regulations is needed, regulations which will place some constraints upon the rights of private property owners and entrepreneurs to acquire and develop land in any way they see fit. A comprehensive plan for the entire Island is the best protection against undesired impacts. The process of developing this plan is critical. The approach taken by Martha's Vineyard has much to recommend it, in that it is based upon strong local participation in planning and allows discrete geographic areas to be identified for different kinds of controls. The designation of special areas on the Island - some where commercial development is permitted, others where it is not; some where cottage colonies and cabins may be constructed, others where they cannot; some where vehicles access can be developed, others where it cannot; some where particular sewage and waste disposal standards must be met, others where they do not apply, etc. - this kind of careful designation could minimize the possibly negative impacts of future tourism development.

The warnings implicit in this study, prepared almost fifteen years ago, fell on deaf ears.

The planning document, prepared for Cavendish by Coopers & Lybrand, clearly recognized the problems that unmanaged development had generated in Cavendish. But it did not do so in the context of the public interest of the province. We are concerned that the substantive issues raised in this plan must be examined, critically, taking into account the importance of Cavendish to the province as a whole.

For example, the document discussed in some detail "water and wastewater management". This included a review of water supplies for the area:

> Water supply for commercial and residential properties in the Planning Area is obtained from groundwater wells drilled in the Permian bedrock aquifer which underlies the area. With one exception, these wells are privately owned, on-site supplies. The only central water system is located at the Seawood Estates development. The closest municipal water system is located in North Rustico.
>
> The Water Resources Branch of the Department of Community and Cultural Affairs has well drillers' reports for 43 wells drilled in the Cavendish area since 1971. The average well depth is 124 feet with only two wells greater than 200 feet. Casing length averages 40 feet and depth to water table varies from near zero to about 100 feet, averaging 37 feet below ground surface. In general, on-site wells (usually 4" to 6" in diameter) have been able to provide 15 - 30 igpm without difficulty. Single wells with yields of up to 125 igpm have been developed. It should be noted that this information is based on wells constructed since 1971, which wells are generally of better construction, in terms of casing length and well depth, than many older wells (1900 - 1970) in the Planning Area.
>
> The bedrock aquifer from which these water supplies are obtained is a highly fractured sandstone formation. It is overlain by 6 - 12 feet of sandy glacial till which generally has good permeability and drainage characteristics. The high permeability of these materials results in a groundwater recharge rate of about 30 to 35 percent of total annual precipitation.

> Assuming that 50% of this recharge can be utilized (the remainder providing groundwater baseflow to streams) withdrawals of 300 igpm per km would be possible on a continuous basis for a 90 day use period. Present groundwater withdrawals, even in core development areas, are only a small fraction of this amount. The estimate of current water usage in the area is 300 million imperial gallons per annum, with a maximum daily demand of approximately 260 igpm.

The planning document concluded that "the groundwater resource is plentiful and will not be a constraint on development", although there were water quality problems to be addressed.

Cavendish was among the communities included in the "Environment Canada Conservation and Protection Groundwater Resource Evolution Project" for Prince Edward Island, a study completed in 1988 by Jacques, Whitford and Associates Limited (to which we make more extensive reference in our discussion on water issues elsewhere in this report). In this study, the findings with respect to Cavendish included, at pp. 137-140, these observations:

> The average well yields as calculated by the computer program are shown on Figure 4490-K1. Several zones of higher yield are indicated. . . . The combined sum of the yields from these zones is about 13 lps. *The use of the estimated well-yields indicated on the drillers reports should be made with caution. It may be necessary to drill a number of wells to provide the necessary quantities,* although the well drilled for Dr. Ellis, which was 122 m deep, was pumped at a rate of 9.5 lps.
>
> Little information is available on groundwater flow directions, but it is expected that flow will generally be in the direction of the ground surface slopes, i.e. towards the creeks or the shore.
>
> Normal precipitation for the Island is 1150 mm per year, with *an average of 25-30% of that recharging the groundwater.* This would result in a total recharge over the community of Cavendish of 2,300,000 m3, or available flow of 73 lps. *Obviously not all of that recharge will be available to a well or well field in a specific location, but it does indicate that there is sufficient supply for the community's needs.*
>
> . . . *[T]he principal water quality problems in the community are high bacteria counts,* and high iron and manganese concentrations. There are underground storage tanks located at the service station, and several lagoons in the community, servicing individual establishments. Although sea water intrusion is not an apparent problem, any high capacity well sited near the shore would be expected to encounter some sea water intrusion. The above areas should be avoided when siting a potential community water supply well.
>
> . . .[I]t is expected that the tourist traffic will increase, at a rate of 1 to 2% per year (Jones, 1988). Any community water supply will have to be sized to handle the peak loading, which will be during the summer months. *It has been estimated that 85% of all Island tourist visitations in a year go through Cavendish, resulting in total numbers of visitors to Cavendish in 1987 of 600,000. If, at a conservative estimate, 10% stay in Cavendish for a period of more than a day, then the total daily additional population would be 1000. The community water supply should therefore be designed for an estimated maximum population of 1500.* If a per capita consumption rate of 350

> litres/capita/day (lpcpd) is assumed, which takes into account both residential and small scale industrial and commercial use in the community, average daily flow requirements will be 525,000 lpd, or 6 lps. Peak hourly flows may be as high as 5 times that figure, or about 30 lps.
>
> . . .*It is estimated that 50% of the community has presently been affected adversely by groundwater contamination, either manmade or natural, or has the potential to be impacted. . . . An estimated 70% of the community has been or is likely to be developed,* . . . Finally, it was felt that the community was very interested in the program, and indeed had even gone so far as to consider costs for the installation of a water supply system. They are presently developing an Official Plan, which is expected to include regulations on lot sizes so that septic tanks can be installed safely. In conjunction with this, they are seriously considering installing a water supply system.
>
> They recognize that water quality is a problem in a number of areas in the community, and that in order to develop their tourist business further, an adequate supply of good water is required. . . .
>
> Based on the location of the water quality constraints (sea water intrusion, possible gasoline plumes, underground storage tanks, lagoons, high iron and manganese concentrations and high bacteria counts), and the topographic conditions, it is recommended that a water supply well be located 300 m east of Highway 13 and 850 m south of Highway 6, as indicated on Drawing No. 4490-K1. A single well 25 cm in diameter and drilled to 125 m should supply sufficient water quantity at this location, although *several may be required if commercial users create heavy demands, or if water quantities are insufficient.* [Emphasis added.]

A comparison between the Official Plan report by Coopers & Lybrand and the Jacques, Whitford study, taken in conjunction with the "1988 Tourist Exit Survey Indicator Survey", suggest a wide divergence in some of the variables being used in discussing the water issue as it relates to Cavendish. The Official Plan indicates "approximately 400,000 tourists visit the Planning Area during the tourist season". The Jacques Whiteford study "estimated that 85% of all Island tourist visitations in a year go through Cavendish, resulting in total numbers of visitors to Cavendish in 1987 of 600,000" and based its estimates for a community water supply on an estimated maximum population of 1,500, of which an allocation of 1,000 persons per day was the estimation for overnight tourist stays. In contrast, the "1988 Tourist Exit Indicator Survey" claimed there were 715,000 visitors to the province and their survey of some 516,000 tourists showed 54% of these "passed through" Cavendish. This would suggest a visitation of 386,100 people to Cavendish (excluding Island residents) during the May to October season and would suggest, further, that the Official Plan estimate on visitation is more realistic on this point than the Jacques Whitford study. While Jacques Whitford estimated 10% of visitors stay overnight in Cavendish, the "1988 Tourist Exit Indicator Survey" found that 21% of visitors cited Cavendish as an overnight destination with 17.3% of all visitors in the survey claiming they stayed exclusively in Cavendish. The latter group had an average length of stay on the Island of 3.4069 days, resulting in a total of 303,589 person-nights in Cavendish for those tourists who did not stay elsewhere in the province during their visit.

We are concerned about the projections in relation to water supplies for Cavendish. The Jacques Whitford study suggests an availability of 73 lps and recommends a system to accommodate a peak of 30 lps, well below 50% of the estimated flow. However, this study suggests a community water supply for 1500 people. We saw no evidence in either document that any tally was done in relation to the existing accommodations in the area. Nor was there any indication that projections in relation to water supply took into account any cultural variables that may result in water demands in excess of 350 litres/capita/day among visitors from foreign countries. (For example, we understand that Japanese cultural patterns result in heavy water usage for personal hygiene, a factor that has resulted in Japan's world leadership in designing products that minimize the amount of water needed for households. In spite of such innovations, the average water supply amoung per capita per day rose from 351 litres in 1970 to 365 litres in 1982.) Finally, a correlation between future water demands and future growth expectations is conspicuous by its absence.

We endeavoured to determine in a rudimentary fashion what types of numbers might be involved in terms of water users in Cavendish without any formal survey or fieldwork in the area. We found that the "1990 Visitors Guide" has advertised the availability of some 340 housekeeping units and 181 overnight units in 38 establishments. If we assumed full occupancy for these 521 units at the rate of 2.1794 persons per unit (this being the average party size of non-resident tourists in the "1988 Tourist Exit Indicator Survey"), we find we have identified a community of 1135 users in this category. The "1990 Visitors Guide" also listed a total of 1,120 campsites among five campgrounds. With full occupancy (and using the same average party size), there are 2,400 users in this group. Already we have identified a potential community size of 3,575, and we have not included the estimated 200 permanent residents; the seasonal residents who are cottage owners or who live in Cavendish to operate businesses or work in tourism; or the day visitors to beaches, attractions and/or restaurants. Nor have we made any allowances for tourism or agricultural users who may have special requirements. Further, we have examined only the available accommodations listed in the Visitors Guide in relation to "Cavendish". Those for locales such as Mayfield or Stanley Bridge, as well as Bed and Breakfast units, may add to the community size. On this basis, we are of the view that a total daily additional population of 1,000 people and a community water supply designed for an estimated maximum population of 1,500 are projections that are unrealistically low.

In spite of reassurances that water quantity is not a problem and that the resource exists in sufficient abundance to supply extensive future growth, we remain somewhat skeptical in the absence of more careful examination of the peak demands imposed on the area. Perhaps our caution is over-abundant, but we are of the belief that a water shortage in the area at the height of peak season would have dire consequences for the province as a whole.

More pressing is concern about water quality. Another backward glance shows clearly that this is not a new issue but, once again, it has not met with forceful reckoning. As far back as the 1976 study by Abt Associates Inc., to which we made earlier reference, problems had been identified. "Current sewage disposal difficulties are being experienced in Stanhope and Cavendish on the North Shore", wrote the consultants. Bacterial contamination of water supplies have been identified in several water tests.

The water and wastewater management section of the Coopers & Lybrand document acknowledged problems with respect to wastewater. At p. 21 the plan stated:

> Sewage disposal in the Planning Area is accomplished largely through the use of on-site septic tank and tile field systems. Sewage generated in the Parks Canada Campground and at some of the large tourist attractions is stored and treated in faculative aerobic lagoons, from which the treated effluent is pumped or piped to receiving streams or the open ocean after the tourist season ends.
>
> The current estimated wastewater generation rates in the Planning Area are the same as the estimated water demands, i.e. 300 million imperial gallons per year, with a maximum daily rate of 375,000 imperial gallons. About 68% of the sewage is treated by septic tank and tile field systems, while the other 32% is held in treatment lagoons before post-season disposal.
>
> The surficial geology in the Planning Area is generally suitable for the installation of septic tank and disposal field systems and the disposal of sewage through these systems.
>
> Septic tank and disposal field systems are generally suitable for use in rural development areas, i.e. where low development densities create physical separation of the systems and sufficient space to develop proper installations. However, septic tank/disposal field wastewater management techniques cannot be developed to provide acceptable performance in areas of higher development density.
>
> The majority of the Planning Area has a relatively low development density at present. The exception is the area along the Cavendish Road from the Cavendish Boardwalk to the area east of the intersection of the Cavendish and Mayfield Roads. This includes the Resort Development Area, the Mixed Commercial Core Area, and the Heritage Area. It is within these areas that most of the major tourist facilities are located and most of the sewage effluent is generated. At a number of facilities in this area, surfacing sewage effluent is a noticeable problem. Maintenance and appearance of the sewage treatment lagoons at some commercial locations have also periodically been less than ideal.
>
> The impacts of inappropriate and inadequate wastewater management can be the creation of groundwater (water supply) contamination, the creation of aesthetic problems (odours), the creation of a direct health risk (uncontrolled ponds of sewage) and, if problems go unchecked, undesirable and unnatural biological alteration of bodies of water. To date, in the Cavendish Planning Area, wastewater management problems have been largely aesthetic, with infrequent (but occasional) contamination of water supplies.
>
> Conclusions drawn from the Wastewater Management Situation Analysis are:
>
> - in areas of low development density, aesthetic and health risks created by septic/disposal field wastewater management techniques are low and, in general, are site specific and a function of the standards with which the systems have been planned and installed.
> - in areas of high development density, the use of Septic Tank/Disposal Field wastewater management techniques is inappropriate and results in a moderate to high risk potential with respect to the aesthetic features of the area and to quality of existing water supplies.

> - insufficient data on existing wastewater disposal systems precludes the identification of boundaries between areas of moderate to high and low risk. . . .
>
> The provision of appropriate sewerage and water services to the Planning Area is an important issue. Without proper facilities, not only will the aesthetic features of the community be negatively affected, but also, the health of residents and tourists may be threatened.
>
> *There have been episodes in the past where major tourism attractions have been forced to close, during the peak business season, due to suspected potable water contamination. Such closures result in a short term revenue loss and in the creation of longer term image and public relations problems, for both the directly affected facility and for the area as a whole.* [Emphasis added.]

[Note: It would appear that the estimated wastewater rate should be 30 million imperial gallons per year based on a maximum daily rate of 375,000 imperial gallons over an 80-day span.]

Clearly, the time has come to place a priority on resolving the water and waste water management issues that exist in the Cavendish area. We are not convinced that a solution necessarily calls for centralized systems aimed at peak demands throughout the entire community. While this may be the simple short answer to these concerns, it may well be that the most economical and feasible approach lies in the utilization of a combination of solutions, such as a centralized system in one part of the community and other alternatives elsewhere. We would suggest that the province institute inquiries in order to determine how other small communities that experience short, but dramatic, population peaks have coped with these issues. Moreover, we are of the view that the solutions to these problems *must* take into account future needs and controlled growth must ensue accordingly. This, in our opinion, is a critical factor in Cavendish for the introduction of an off-site utility based on user-pay principles that include frontage charges for raw land are certain to accelerate "market forces" in converting agricultural land to other uses. Given the rural nature of the Cavendish area, the brevity of the peak period and the expense of installing centralized systems, choices must be made - choices which narrow the long-term land use patterns substantially.

We are also of the opinion that the proposed plan for Cavendish fails to accord the role of agriculture proper recognition as a component in tourism. Farming and tourist development are seen as two separate and distinct industries. Thus, for example, one of the policies put forward in the section on Agriculture is expressed at page 32 in these terms:

> Promote the orderly transfer of land from agriculture to tourism development as market demands dictate.
>
> Land transferred from agriculture to development should occur as the market dictates. However, if development is not to take place, for a certain period of time, the land could be left in agricultural production.

Cavendish has become a tourist area because of Green Gables and the National Park. It is the agricultural landscape, the working landscape of farms, combined with the seascape of the National Park, that makes our North Shore Area a resource for tourism. Green

Gables - built on the storybook heritage of a rural community - provides that extra draw for Cavendish above and beyond other North Shore Areas. While other attractions may augment these features, it must always be remembered that these are features all out-of-province tourists can readily find elsewhere. Without agricultural preservation in Cavendish, all tourist developers stand to lose the "goose that laid the golden egg".

That this perspective of the importance of agriculture to the Cavendish milieu is not appreciated in the document is apparent from some of the other features. For example, there is recognition that "at the present time, there are no areas along Route 6 which allow people to pull off the highway to read a map, have a picnic or view the landscape". To remedy this, the plan proposes a total of five "day-use parks" on the north side of Highway 6 which "offer significant panoramic views of the landscape". The proposal promises that: "In some areas, the land base is of sufficient size, parallels the land/sea interface and has an open landscape quality - offering long distance views over the National Park and adjacent agricultural landscape". But all of these day-use parks are placed in the commercial core area of Cavendish. All of the "viewpoints" diagrammed on the accompanying map point to a seaward perspective. Nowhere is there any designated area along Highway 6 from North Rustico to allow a scenic view of the agricultural landscape relatively uncluttered by commercialism and tourism adjuncts. Similarly, "proposed recreational opportunities" ignore the agricultural sector. There is nothing in the plan that would allow tourists to learn more about agriculture or to urge recreational activities that would be tied into the agricultural sector, such as horseback riding or hayrides.

Another concern we have with the plan proposed for Cavendish is the minimal recognition accorded the problem that continued growth in Cavendish poses for the sand dune system in that area. The focus is not only towards tourism and away from agriculture, it is also centered on commercialism and the beach. The proposal, for example, finds that "[t]he maintenance of the Gulf Shore Road is viewed as a critical component in the overall transportation system. If closed, the existing and anticipated future problems related to the transportation system may be compounded." Yet, at the same time, the document acknowledges that "[i]n the North Shore Area, the annual rate of erosion is approximately two and one-half feet each year - a rate which poses serious consequences for shoreline development.".

While the beach is an integral part of Cavendish, neither the section on "Environmental Sensitive Areas" or the section on the "National Park" acknowledge the need for sand dune preservation. At p. 52, the plan states: "[t]he Cavendish main beach experienced over 470,000 hours of use (Environment Canada 1987). The most popular activities after beach use were visiting Green Gables and driving the Gulf Shore Parkway". In spite of this acknowledgement of the importance of the beach in the vitality of tourism in the area, the document actively supports further growth and development without taking into account the detrimental effects of more people using a fragile resource.

The impact of human disturbance on coastal sand dune areas has been well documented. During the course of the recent L.U.C. hearings on the proposed Greenwich development, the Chief Park Warden for the Prince Edward Island National Park, Sandy McLain, testified that the Park, in spite of its protected status, has suffered a lot of sand dune damage. Much of it has resulted in a lowered aesthetic quality to the sand dune landscape. Some of the deterioration has been due to erosion because of the loss of protective vegetation cover. Human damage has occurred because of the high visitation to the Park which has the third highest number of visitors in the Canadian National Park system.

A "Monitoring Report" on Dune Stabilization in the Dalvay District for the years 1980-85 was part of the documentary evidence presented at the Greenwich hearings. It chronicled the attempts to repair problems with sand dunes in that part of the National Park. The study showed that "it takes approximately 160 person hours to rehabilitate approximately 180 square meters of damaged dune area". The study also provided some very graphic statistics on how quickly dunes that have been damaged will disintegrate and how difficult they can be to stabilize. A few examples will suffice. In 1985, in the Brackley Area, culms of marram grass were planted in an attempt to stabilize damaged dunes. Daily records were kept on the project. Four days after the first group of culms were planted, strong northeast winds deposited 1 to 4 inches of sand over the area within a single day. Fencing was also used in an attempt to control dune problems. The "Monitoring Report" described the results of using fencing in parts of the Dalvay District. Accordingly, it was able to provide this data with respect to the boardwalk at Brackley Beach:

> Fencing in this area to date has resulted in less sand being deposited over the boardwalk at Brackley Beach. In the spring of 1985, after the snow had melted, there were between 6cm and 25cm of sand left on the boardwalk over a distance of ten metres. For the same time frame in 1984, *there was 15 cm. to 1.5 meters of sand deposited over an eighteen-meter section of the same boardwalk*. [Emphasis added.]

Finally, and perhaps most critically, it is apparent from the "Official Plan for the Comprehensive Development of the Cavendish Planning Area" that the hard decisions on trade-offs have been postponed. This is evident at the outset from this passage at page 4:

> The community has indicated the need to, "allow private landowner rights to continue" - as long as individual decisions are sensitive to the communities concerns. A fine line must be struck between allowing development to occur as market forces dictate while at the same time protecting the overall integrity of the community.
>
> Many individuals associated with the agricultural community indicate a need for some form of "right-to-farm" legislation. There is a need to protect existing farm operations from encroachment and possible opposition from tourism developments. The traditional method of zoning land as agricultural is not satisfactory. The agricultural community has also indicated that the opportunities to change the use of the land from agriculture to tourism development must be guaranteed.
>
> In the same instance many tourism operators have raised a concern over the possible negative impacts agricultural operations may have on their developments. They feel their investment is also worthy of protection.
>
> If it is assumed that the Planning Area's land provides the basis for agriculture and the landscape provides the basis for tourism, then the area runs the risk of damaging the natural assets which have created these economic opportunities.

The Province must take considerable responsibility for the problems that have arisen in Cavendish. Its failure to adopt land use policies and to make hard choices have allowed a situation to fester unabated to the point where a crisis is at hand. Elsewhere in this report we have indicated that a single misuse of chemicals can, overnight, endanger our entire potato industry. In the context of Cavendish, a single mis-step can seriously jeopardize the foundations of our tourism industry. That mis-step may come overnight by way of a water quality or quantity problem. Or it may creep more slowly over a period of one or many tourist seasons, driven by visitor disillusion with the over-commercialization of a no-longer attractive pastoral rural area or by the destruction of the Cavendish beach - or both.

It is not only "land use planning by omission" that has placed Cavendish in this position. It is also a myriad of other government policies and practices. Chief among these are the past and present policies and practices of the provincial Department of Tourism and Parks, which has consistently focused tourism on the Charlottetown and Cavendish areas to the exclusion of other parts of the province.

Consider, for example, the "Tour Planner: Packaging and Motorcoach Information", a publication issued by the Department in 1988. It provides four "sample itineraries", as follows:

(1) Borden/Summerside/Cavendish/Charlottetown/Wood Islands;

(2) Wood Islands/Charlottetown/Victoria-by-theSea/Cavendish/Borden;

(3) Borden/Summerside/Acadian Region/Cavendish/Charlottetown/Wood Islands;

(4) Borden/Summerside/Acadian Region/Victoria-by-the-Sea/Charlottetown/Cavendish/Wood Islands.

While the third "sample itinerary" provides the option of visiting the West Prince area, rather than the Acadian region, not a single "sample itinerary" suggests any type of entry whatsoever into Kings County. Not only do all the sample itineraries call for visits to Cavendish and overnights in Charlottetown (or Summerside if the itinerary calls for more than two days in the province), but three of the four itineraries have options that would include at least a second trip from Charlottetown to "one of the community lobster suppers in the Prince Edward Island National Park area".

Evidence that the province has been responsible for the problems in Cavendish also comes from its lending practices. The annual report for 1987/88 of the Prince Edward Island Lending Authority, at page 8, contained this statement:

> Loans and credit in this division totalled $4.7 million, down slightly from the previous fiscal year.
>
> Fifty-four tourist operators took advantage of the Authority's programs during the past fiscal year with the *heaviest investment of funds being in the Cavendish area.*

> *The Authority has some concerns with the rapid growth in the Cavendish area and is experiencing some difficulty in rationalizing the growth of fastfood outlets, gift shops, and other attractions that are proliferating in this area and our concern is "when is the saturation point reached?"* We have suggested to the Department of Tourism that, in concert with the Tourism Industry Association, this situation be given some consideration. [Emphasis added.]

In spite of this warning, it would appear that both the province itself and the P.E.I. Lending Authority have carried on traditional policies. Now, this situation has been further intensified by ACOA funding that has resulted in much enhanced investments in tourism without any apparent regard for land use policies or concerns, either in Cavendish or the remainder of the province.

The issues to be resolved were clearly identified by Abt Associates in their study on the "Impacts of Tourism on Prince Edward Island". At pp. 23-24 of the Executive Summary, the consultants enumerated four essential trade-offs involved in the decisions to be made:

> There are several basic issues which must be resolved by actors on Prince Edward Island as a comprehensive policy on tourism is developed. The involved tradeoffs in perceived costs and benefits for which there are no "right answers" and which only Islanders can resolve. The *first* is the basic trade-off between private property rights and public interest. This is the fundamental issue which affects the adoption, partial adoption, or rejection of comprehensive land use planning. As outside consultants without land interests in Prince Edward Island, it may be considered by some Islanders that it is too easy for the authors of this study to conclude that some compromise with private property rights should be made in interests of the corporate good. However, as outside consultants without vested interests, the authors' conclusions may also reflect an objectivity which bears serious consideration.
>
> A *second* general trade-off to be made by policy makers is between the importance of tourism, and of other sectors of the Island's economy and way of life. In many respects this trade-off is made in considering a *third* issue, the trade-off between the economic benefits and the social inconveniences/environmental risks from tourism development. Clearly, any level of tourism growth increases the value added to the Island economy. Moreover, proper mechanisms of planning and control can minimize the social and environmental impacts of different levels of growth. Still, under any circumstance of planning and regulation, some general decisions balancing economic benefits with other costs should be made. Under current patterns of tourist distribution and behaviour, the average value added per tourist party is about $94.00. While value added figures could be somewhat increased by encouraging a different mix of tourist types, the $90.00 per party estimate is a not unreasonable parameter upon which decisions can be made.
>
> The *final general trade-off* is between the costs and benefits to different regions and areas of the Island. A decision to redistribute tourist traffic more to Prince and Kings Counties is part of this trade-off. In addition, there are other related decisions. For example, any strategy of tourism growth is accompanied by a need for services which, in some residents' minds, will be viewed as undesirable. Hotel and motel accommodations, fast food restaurants, and some forms of entertainment are dimensions of tourism development which, though controllable,

> are not entirely avoidable. Decisions must be made regarding where these services will be located and where they will not be permitted. A strategy of combining the more "commercial" aspects of tourism development to well-defined areas (perhaps those areas where such development has already begun) and protecting other areas from visual blight and environmental disorders may be called for. In any case, the trade-off must be made.

Neither the "Official Plan for the Comprehensive Development of the Cavendish Planning Area" nor "Vision 2000: A Statement on Tourism Development" provide any assurance that these trade-offs are being undertaken.

The Cavendish situation, in particular, and tourism in general need to be evaluated in terms of land use issues. In this context, a review of some of the factors identified by Myles C. Rademan in his article on "Ski Town Prediction: Obstacles Ahead" (*Planning*, vol. 53, no. 2, February, 1987) bear reflection. Rademan pointed out some of the parallels between agriculture and tourism:

> In many respects, the ski economy resembles the farm economy. Like farming, skiing is seasonal, capital intensive, and dependent on a host of factors beyond local control: energy prices, airline schedules, international competition, the media, fads and trends, extent of disposable income - and the weather. Sometimes it doesn't snow enough; sometimes it snows too much, and at the wrong time. Despite these uncertainties, our massive capital investments must be amortized. The iron law of debt service does not respect the weather.

Although his comments were made in the context of the ski business, we believe the thrust of his observations are equally valid in relation to tourism in the Island setting. He also alluded to the difficulties faced by ski towns where "we must provide an urban level of service in a rural setting and must pay for it from a precariously narrow and fluctuating tax base". His article emphasizes some of the challenges now facing the industry.

> Ski resorts are now in the entertainment business. That means that they have to start thinking like an entertainment business - like the Disney corporation, for instance, which records over two and a half times as many visitor days as all the Colorado ski resorts combined. Disney trains its newly hired employees at "Disney University", stressing people-to-people contact and how to treat customers as "guests".
>
> Given the fact that *it costs 100 times as much to attract a new customer as to bring back a repeat visitor,* the importance of satisfying your guests becomes obvious. Learning to do so is the key to our future as we make the transition from a growth economy to one based on entertainment and service.
>
> ……
>
> *A major attraction of the Colorado ski resorts is their pristine rural character and unfettered natural beauty.* It's those qualities, I believe, that draw the visitors from urbanized areas of California, Texas, and Illinois - the origin of over 25 percent of Colorado's tourists.
>
> *The danger is that we will love the mountains to death, that success will kill us. Acrimonious conflicts over environmental concerns, including water scarcity, development, and the preservation of traditional values, have already surfaced in*

> *resort communities. Our track record in protecting our natural resources has been mediocre at best. Our continuing challenge is to find a way to foster economic development without killing the proverbial goose that laid the golden egg.*
>
> The towns that find a way to do so will have an important leg up in economic development. Skiing is now the single largest industry on Colorado's western slope, accounting for up to one-third of the area's economic activity and employment. Yet this important fact is barely appreciated by county commissioners and state legislators. Nor is it always understood by the ski towns themselves. They must learn to capture the potential of tourism without becoming slaves to unfounded expectations about it. . . . [Emphasis added.]

While Rademan was centering his observation on a niche in the tourist industry foreign to Prince Edward Island, the parallels are obvious. The communities involved were rural ones, dependent on a massive influx of visitors for one season of the year. The impacts of providing extensive capital investments and urban-styled infrastructure were being questioned in the face of changing trends in the overall industry and environmental risks inherent in expansionary endeavours. Parenthetically, it is interesting to note that the author, a specialist in ski town planning with a joint planning and law degree, was employed by a Utah community with a permanent population of 3,500 - after spending almost two decades as the planner for a Colorado community with a year-round population about one-third of that. Were such small communities able to afford these professional services because of the success of their industry? Or did their industry become successful because they brought in professional advisers who counselled wisely on land use policies, marketing strategies etc. - with acceptance and commitment to the advice?

Where is tourism headed in the province? Is growth predicted on more tourists or more tourist dollars? Should new infrastructure to develop the industry be channelled into additional seasonal locales? Or should capital investments be encouraged in communities where there are larger permanent populations - where there are local residents available to service facilities in the shoulder seasons, where sewer and water infrastructure are already available, where accommodations can be used as substitute housing for senior citizens and university students during off-seasons and where restaurants and attractions are available to local residents for all or much of the year? Should the public be asked to support more and better roads and urban-style infrastructure for Cavendish when the majority of its business operators continue in the traditional pattern of maintaining only a July/August tourism season?

We are of the view that these types of issues must be considered in the context of developing a land use policy that takes into account the tourism industry in the province. Decisions need to be made on such issues before future growth in Cavendish is contemplated. And the existing problems in Cavendish need to be resolved before there is further growth in Cavendish.

Accordingly, we recommend

- **THAT the province determine its policies for the tourism industry in relation to land use issues.**
- **THAT future growth in Cavendish be controlled in the context of such a policy.**
- **THAT until such time as the province has determined its policies for tourism in relation to land use issues and until such time as the water and waste water management problems in Cavendish have been resolved, the province place a moratorium on seasonal and/or tourism-related growth in Cavendish.**

Chapter 10

SHOPPING CENTRES

The *Report of the Royal Commission on Land Ownership and Land Use,* issued in 1973, made no mention of shopping centres. That, no doubt, was hardly surprising at the time, for the existing shopping centres consisted of only three small malls: the Ellis Brothers Centre, which opened in 1964; Royalty Mall, that began operations two years later; and the K-Mart Plaza, which commenced retailing in 1969. In the Summerside area, the first of its three shopping centres - the Summerside Mall, located in Sherbrooke - was to be the fourth example of this form of retail shopping development and its opening year, 1973, coincided with the Royal Commission's *Report*. Seventeen years later it would be unthinkable not to address this issue, given the prominence it has received over the past decade.

A study, prepared for the Charlottetown Downtown Business Association in February, 1980, by Emrik H. Suichies, M.C.I.P., traced the statistical roots of the issue. In his study, "The Impact of Shopping Centre Development on Prince Edward Island", Mr. Suichies pointed out that: "[d]uring the last 15 years, Prince Edward Island has built more retail space than was accumulated during its entire history up to 1965. In fact, the amount of retail space in the Province almost tripled during the 1965-80 period."

Quick calculations, based on the data he provided (which is reproduced as Table 1 below) shows that Suichies could have added that more than two-thirds of the gross leasable area in shopping centres in the Province was created in the latter half of this 15-year interval.

Table 1

Shopping Centres in Prince Edward Island, February 1980

Location	Name	Type	Year Opened	Gross Leasable Area (sq. ft.)	Claimed Market Population	
					Prime	Secondary
1. Charlottetown	Ellis Brothers Centre	Neigh./Open	1968	34,600	9,000	35,000
2. Charlottetown	K-Mart Plaza	Comm./Open	1969	133,095	26,000	100,000
3. Charlottetown	Royalty Mall	Comm./Encl.	1966	100,000	73,000	120,000
4. Charlottetown	University Plaza	Neigh./Open	1978	44,165	N.A.	N.A.
5. Montague	Down East Mall	Neigh./Open		35,000	5,000	20,000
6. Sherbrooke	County Fair Mall	Comm./Encl.	1975	155,000	15,000	50,000
7. Sherbrooke	Summerside Mall	Comm./Encl.	1973	31,000	11,000	28,000
8. Summerside	Waterfront Mall	Comm./Encl.	1974	170,000	35,000	35,000
9. West Royalty	Charlottetown Mall	Reg./Encl.	1974	290,000	75,000	120,000
Totals				1,062,860	141,000	508,000

Neigh. - Neighbourhood Centre
Comm. - Community Centre
Reg. - Regional Centre
N.A. - Not Available
Encl. - Enclosed

Charlottetown Area	621,860	square feet GLA
Summerside Area	406,000	square feet GLA
Montague	35,000	square feet GLA
Total	1,062,860	square feet GLA

Sources: MacLean-Hunter Limited - Canadian Directory of Shopping Centres, 1979.
Mr. A. Wightman, proprietor of Montague's Down East Mall.

[Table 1 is found in "Impact of Shopping Centre Development on Prince Edward Island" by Emrik Suichies; this 1980 report was contained as an appendix to one of the presentations to this Royal Commission.]

(It is interesting to note that by 1980 the "prime claimed market population" for these 9 shopping centres was more than double the actual size of the provincial population, while the "secondary claimed market population" was about four times the number of Island residents.)

Other data that is worthwhile pointing out is provided by Michael Ircha in "Shopping Malls: Their Development and Impact in Atlantic Canada", a paper presented as part of the Public Forum Series that was sponsored by the Institute of Island Studies in September, 1986. Ircha's presentation included a bar graph showing the relative percentages of local and out-of-province ownership of shopping centres in the Atlantic region and in each of the four Atlantic Provinces over a twenty-year period. This graph showed that during the decade of the 1960's, 100% of the ownership of shopping centres in Prince Edward Island was concentrated in local hands. In the interval between 1970 and 1975, that ownership ratio altered such that only 55% of shopping centre-related space in Prince Edward Island was found to be in local ownership. Between 1975 and 1980, the proportion of local ownership was wiped out entirely.

Trends towards out-of-province ownership of retail space through the non-resident ownership of shopping centres, albeit somewhat less dramatic in other Atlantic jurisdictions during this time period, prompted Mr. Ircha to describe the early development of shopping centres in the region in these terms:

> Shopping mall facilities spread rapidly to smaller communities during the latter part of the 1970s boom era. Developers continued to seek retailing opportunities in the "middle-market" - the smaller cities and towns missed in their earlier thrusts to saturate metropolitan markets. Nowhere was this more apparent than in Canada's Atlantic provinces. . . . [M]ost of the shopping centres in Atlantic Canada (about 70 percent of existing retail space) were built in two major waves of development (1972 - 75 and 1977-80).
>
> Although little controversy surrounded the initial wave of shopping centre development, probably because they were seen as a progressive innovation and thus a boon to local communities, major public concerns were raised about the second wave. Businessmen, government officials, planners, and others publicly [*sic*] voiced their concerns about the anticipated detrimental effects of unfettered shopping mall development. These concerns were reflected in articles such as "Can Atlantic Canada Survive Killer Malls?" and "East Coast Takes a Malling".

> A further factor creating a public demand for shopping mall regulation in Atlantic Canada was the sheer volume of retail space being provided. . . . [O]n a per capita basis the Atlantic region had the most development in the first half of the 1970s and dropped to second place following B.C. and Alberta in the latter part of the decade. The major growth areas of Ontario and Quebec suffered a major decline in the development of shopping mall space in the second half of the 1970s as developers sought better opportunities elsewhere, notably in Atlantic Canada.
>
> Many critics of the rapid growth of shopping malls saw these facilities as yet another device designed to tap local funds and to direct profits out of the region to central and western Canadian corporate headquarters. Since 1980, both the ongoing economic recession and the regulatory actions taken by various provincial governments...acted in unison to stifle the development and spread of major retail facilities.
>
> Although a number of factors contributed to the public concerns raised, the identity of the new shopping mall developers likely created the greatest furore. . . . [I]n-province ownership of Atlantic region shopping malls decreased considerably during the second wave of development (from 45 percent in 1970-75 to 19 percent in 1975-80). In other words, most of the new shopping malls built in the latter part of the 1970s were developed by non-regional firms - the majority being from Ontario, Quebec, and Alberta. By 1980, about 54 percent of all Atlantic region shopping centres were owned by non-Atlantic development firms.

The second and subsequent waves of shopping centre development in Prince Edward Island produced turbulent land issues. These culminated, during our tenure as a Royal Commission, in the longest hearing ever experienced by the Land Use Commission. While much of the activities leading up to the record-setting longevity of that L.U.C. appeal could best be chronicled in the memoirs of the central participants, a scanty review of a few highlights will serve to recall some of the milestones.

A proposal by a local developer, Frank Johnston, to construct a new shopping centre in West Royalty - one which would significantly increase the amount of retail space in the Province - put the issue into focus even before the decade of the '80s began. Legislation that placed a moratorium on development of this magnitude was enacted to allow time for studying the issue and a Commission of Inquiry was established. This Commission of Inquiry on Shopping Centres and Retail Stores reported in 1980 and its conclusions proved to be a forerunner of Part VII of the *Planning Act*, R.S.P.E.I. 1988, Cap. P-8.

Part VII of the *Planning Act*, which is entitled "Major Retail Development", applies to "a development or redevelopment involving the provision of new or additional retail space in excess of 2,000 square metres, exclusive of existing retail space" (to cite from the definition used in Section 30(g) of the legislation). The effect of the provisions require that major retail development can locate only within the boundaries of a municipality - in other words, in an incorporated area, including one incorporated as a Community Improvement Committee.

Part VII of the *Planning Act* provides a process that is triggered when a developer seeks approval for a building permit to construct a major retail development. The process requires the preparation of an impact statement by a consultant, hired by the council but paid for by the developer. Once the impact statement has been prepared, the council of the municipality is required to hold a public meeting at which the developer presents the proposal and there is a "full opportunity for the expression of public opinion including opportunity to address questions to the developer". Other provisions require a minimum of two weeks notice of this public meeting be given, that interested persons can make representations at the public meeting and that copies of the impact statement are available for public inspection. (Section 33).

After the public meeting has been held, the municipal council is in a position to consider the application for a building permit for the major retail development. Section 35 of the *Planning Act* mandates factors the municipal council must consider in reaching its decision on approving or rejecting the application. Specifically, "the council shall consider whether the proposed development will have a positive or negative impact in the community, region or province, taking into account the impact statement, site plan and the record of the public meeting and shall decide to approve or deny the application in principle".

If the municipal council grants approval in principle to the developer's application, the next stage of the process is a development agreement. Under the terms of Section 36(1) the council "shall determine the terms of a development agreement". The "development agreement" is not defined and what it must include is not mandated except for the provisions of Section 36(2) which provides as follows:

> 36. (2) No building permit shall be issued in respect of a major retail development unless the developer enters into a development agreement with the council under which the developer undertakes
>
> (a) to use the gross leasable floor space specified in the agreement in accordance with the site plan;
>
> (b) to carry out the work specified in the agreement;
>
> (c) to bear the costs of public improvements incidental to the development as set out in the agreement and to provide security satisfactory to the council in respect of those costs.

Once the municipal council and the developer have agreed to the terms of a proposed development agreement, the draft of the agreement is subject to the approval of the Minister responsible for the *Planning Act*, the Minister of Community and Cultural Affairs. The legislation is silent as to any considerations or factors that the Minister must use as a standard in deciding whether the development agreement is or is not approved. Once the Minister's approval, signified in writing to the Council, has been obtained, then (and only then) can the Council enter into the development agreement and issue the building permit.

Apart from the need to approve the draft development agreement, the Province (through the Minister of Community and Cultural Affairs) becomes involved in dealing with major retail developments only where the proposed location is within a municipality where the Minister (and not the municipal council) is the authority empowered to issue building permits. In those situations, under the provisions of Section 34(2), "the Minister may designate a person to act on his behalf" in conducting the public meeting and determining the procedure at the meeting and under the provisions of Section 37(4), "the Minister may (a) enter into the development agreement; [and] (b) issue a building permit in respect of the major retail development."

There are no provisions to spell out whether it is the role of the Minister to act in place of the municipal council in those portions of the process relating to the initial authority receiving the application, the impact study arrangements and the notice of the public meeting. Such questions can be answered, however, by reference to the definitions provided in Section 30 where paragraph (c) provides a novel definition of "council"; "council", according to this provision, "means the council of a municipality or other authority authorized by law to issue building permits within a municipality and, where the Minister is the authorized authority, means the Minister."

Where the building permit is denied, Section 38 requires that the "council" must "send a notice in writing to that effect to the developer".

Part VII of the *Planning Act* also provides an appeal process with Section 39 outlining the procedural and substantive requirements for an appeal to the Land Use Commission. Section 39 states as follows:

> 39. (1) Any persons aggrieved by the decision of a council to issue or deny a building permit in respect of a major retail development or the decision of the Minister to grant or refuse approval therefor, may appeal the decision to the Commission by notice to the Commission, the council, the Minister and the developer within thirty days of the issue or denial of the building permit and if no notice is given within that time that decision is final.
>
> (2) Where a building permit is issued in respect of a major retail development, the council shall cause notice thereof to be given in the Gazette and in a daily newspaper circulating in the municipality.
>
> (3) Where a building permit is issued in respect of a major retail development, the developer shall not commence and if he has commenced shall stop building operations, including site preparation, until
>
> (a) the period for appeal to the Commission has expired; or
>
> (b) if an appeal is filed, the Commission has made an order evidencing its disposition of the appeal.
>
> (4) Failure to comply with subsection (3) may be restrained by injunction on application to the Supreme Court.
>
> (5) Within ten days after receipt of notice of appeal by the parties named in subsection (1), the council and the Minister shall deliver to the Commission such number of copies as the Commission may reasonably require of all the relevant documents upon which the decision of the council or, as the case may be, of the Minister was founded.
>
> (6) The Commission, within thirty days after receipt of the documents referred to in subsection (5), shall commence a hearing into the issue.

> (7) The Commission may
>
> (a) examine all the relevant documents upon which the decision of the Minister or the council was founded;
>
> (b) determine all matters of procedure;
>
> (c) examine witnesses on oath;
>
> (d) require the developer or the appellant to provide further studies in order to enable it to evaluate the impact of the development;
>
> (e) require the appellant to give security for the costs of the appeal.
>
> (8) The Commission shall, within thirty days after hearing the evidence and reciving any argument, hear the issue and make an order evidencing its disposition of the appeal.

In other words, the decision to approve or deny the building permit may be appealed by "any person aggrieved by the decision" providing the appeal is launched within thirty days. Construction may not proceed during this appeal period or thereafter, until a decision is rendered, if an appeal is launched. The Land Use Commission then has thirty days in which to render its decision.

In addition to these provisions, Part VII also contains four other Sections which should be noted. Unlike other portions of Part VII, Section 40 is applicable "to any building in the province whether or not located within the boundaries of a municipality." (Section 40(6)). The provisions of Section 40 provide for incremental increases in retail space. Section 41 provides that Part VII requirements imposed upon major retail development "are in addition to and not in derogation of the regulations or any bylaws in force in a municipality respecting development". Section 42 contains provisions in relation to building permits issued on the date the Major Retail Development portion of the *Planning Act* first came into effect in 1981. Finally, Part VII contains what may be termed a "sunset clause", for Section 43 states: "[t]his Part and subsection 29(5) cease to have effect on April 1, 1991 and shall be deemed to be repealed on that date".

Should the "sunset clause" come into effect, then major retail development would no longer be dealt with under Part VII of the *Planning Act*. Instead, it would be subjected to the provisions of Part VI of the *Planning Act*, which deals with major development and the appeal process described in Part V of the legislation. Parts V and VI are contained in Sections 28 and 29, respectively, and provide as follows:

PART V
APPEALS

> 28. (1) Subject to subsection (2), any person who is dissatisfied by a decision of a council or the Minister in respect of the administration of regulations or bylaws made pursuant to the powers conferred by this Act, may, within twenty-one days, appeal to the Commission.
>
> (2) Subject to adherence to the rules of natural justice, the Commission shall determine its own procedure.

(3) The Commission shall hear and decide appeals and shall issue an order giving effect to its disposition.

(4) The Commission shall give reasons for its decision.

(5) The decision of the Commission is final and binding on all parties to the appeal and no appeal lies therefrom.

(6) The council or the Minister, as the case may be, shall enforce an order made by the Commission.

PART VI
MAJOR DEVELOPMENT

29. (1) In this section "major development" means

(a) any new, or the expansion of any existing, development for

(i) commercial,
(ii) industrial,
(iii) institutional, or
(iv) intensive livestock, use, for which a permit is required; or

(b) any subdivision of land in excess of five lots for residential or cottage use for which approval is required.

(2) Where a permit is issued or subdivision approval given in respect of any major development, the authority issuing the permit shall cause notice thereof to be given in a daily newspaper circulating in the area in which the development is located.

(3) The appeal period referred to in subsection 28(1) begins to run on the date of publication of the notice under subsection (2).

(4) Where a major development involves the provision of new or additional space in excess of 2000 square metres in any building for commercial or industrial use, in any municipality with an official plan, the council shall submit the application to the Minister to determine if public improvements are required and a development agreement is necessary.

(5) This Part does not apply to a major retail development governed by Part VII.

The automatic repeal of Part VII, triggered by the sunset clause, would mean a building permit for a major retail development could be issued for a location in both incorporated and unincorporated areas of the Province. There would be no requirement for an impact statement or a public meeting. The matter would be treated in the same manner as any other building permit except that public notice following the issuance of the building permit would be required and, where the municipal council had an official plan, the council would need to submit the application to the Minister "to determine if public improvements are required and a development agreement is necessary".

The appeal procedure under Part V contains minor variances from that outlined in Part VII for major retail development. The right of appeal is normally 21 days, not 30 days. The Land Use Commission is not normally bound by a time limit in which to render its decision whereas an appeal under the major retail development provisions requires a decision within 30 days. Persons who may appeal decisions are those "dissatisfied" in the usual course of events, whereas major retail development can be appealed by any person "aggrieved". The chief distinction lies in the fact that an appeal launched under the major retail development provisions requires the developer to cease building operations until the appeal has been heard and decided, while an appeal to the Land Use Commission under Part V does not allow for any suspension of the building permit pending the outcome of the appeal.

The provisions of Part VII of the *Planning Act* have resulted in three appeals before the Land Use Commission. The first case on major retail development was the issuance of a building permit by the Community of West Royalty to Canadian Tire. The appellants in that case, Central Farmers Co-operative Association Ltd., Royalty Mall Ltd., Confederation Court Mall Merchants' Association Inc. and Dyne Holdings Ltd., argued that the Canadian Tire application was, in reality, the opening phase in an attempt to construct a larger, major retail development project in a piecemeal fashion. However, the Land Use Commission determined that it could rule only on the major retail development application before it and could not consider future development on the site.

The following year, 1986, the Community of West Royalty issued a development permit to Food City Ltd. to construct a supermarket across the parking lot from the new Canadian Tire store. This decision, appealed to the Land Use Commission by the Downtown Business Association of Charlottetown Inc., the City of Charlottetown, the Continental Bank of Canada (as mortgagee in possession of Royalty Mall), Ellis-Birt Limited and others, ended up in court on preliminary issues and was subsequently reconvened under the auspices of a new L.U.C. panel. By the time this had happened, the building had been built. The appellants then withdrew from what many had come to feel was a futile appeal, for it was doubted that neither the Commission nor the Government would (or could) order the removal of the building. It was this situation that preceded the enactment of amendments to Part VII of the *Planning Act,* prohibiting a developer from proceeding on a building permit until the Land Use Commission had disposed of an appeal where major retail development was involved.

The third appeal before the Land Use Commission on major retail development pursuant to Part VII of the *Planning Act* began in 1985 with an application for a building permit to construct a major retail development submitted by Consolidated Development Inc., now known as C.H.D. Investments (1987) Inc., to the Council of the Community of West Royalty. The Council granted this building permit on May 6, 1988 and appeals were launched by a number of established businesses from the greater Charlottetown area. Ultimately, the appeal was denied in a decision rendered by the Land Use Commission on February 14, 1990. While the longevity and expense of these proceedings were not lost on either the L.U.C. or the local media, the L.U.C. was not unmindful of the importance of the issue. In its decision, at pp. 3-4, the Land Use Commission stated:

> The Commission heard extensive and sometimes exhaustive argument on the substantive matters involved in the appeals over a period of seventeen months or 97 hearing days. This particular hearing proved to be the longest ever experienced by the Commission. The length of the hearing resulted in countless references to the

> extreme cost, the abuse of the process and the "filibustering". A substantial amount of time was spent in hearing the substantive issues intertwined with legal argument. However, the Commission believes all parties were dealt with fairly, given adequate opportunity to argue their cases and each counsel served their clients with exemplary commitment and dedication. Although the hearings appeared at time [*sic*] to resemble a treadmill with little satisfactory progress, the character of the hearings could not overshadow the extreme importance of the suburban retail development issue to the Province of Prince Edward Island. In 1980, the *Report of the Prince Edward Island Commission of Inquiry on Shopping Centres and Retail Stores* reported the historical significance of this issue. In fact the matter of the possibility of 800,000 square feet of shopping centre development was of such significance, that in April, 1981 special legislation was designed for purposes of carefully evaluating new shopping centre development proposals, including expansions. The previous appeal heard by the Commission, under the Major Retail Development legislation, considered a proposal by Canadian Tire Corporation that had few similarities to this development, except for the common location. This application involves a closed-in shopping centre that has been anticipated for more than a decade. After hearing argument over the past seventeen months and after considerable deliberation, the Commission believes that *such developments will have significant effects on the role of communities in the province to the extent that irreversible change will occur with respect to their functions, their patterns of land use and development*. The magnitude of the matter is not one to be taken lightly. It is the Commission's view that *careful forethought is essential in considering the complex consequences of such major retail developments. The time spent considering such a proposal is relatively short compared to the time they exist once constructed. The change that occurs as a result of such developments cannot be undone*. The Community Council, the Minister, and by nature of appeal, the Commission have a great responsibility for the decision in that *the decision will affect not only present generations, but those to come*. [Emphasis added.]

The importance of the major retail development issue lies in the many impacts generated by large-scale shopping malls. These impacts were outlined by Michael Ircha in his presentation "Shopping Malls: Their Development & Impact in Atlantic Canada". There, he stated:

> The opening of a new shopping mall or major retail facility in most municipalities (particularly smaller ones) implies an almost overnight introduction of a large increase in retail floor space into the local market. This rapid increase has a number of impacts on the host municipality and its region. Although these facilities have been soundly criticized in the past, in all fairness both the beneficial and detrimental effects should be considered.
>
> McCabe has pointed out that the advantages of introducing a new shopping mall include "...increased convenience, comfort and an enhanced availability of goods and services." Obviously, there can be little dispute that these advantages do accrue to a certain sector of the population - those residents fortunate enough to be mobile and who can drive to the facility. In a number of cases, however, the introduction of new suburban shopping malls has caused a decline in retail sales and subsequent bankruptcies in downtown areas. In turn, this implies reduced retail services (often in food stores) for people residing in the neighbourhoods around the downtown - typically, the poor and the elderly (the non-mobile sector of our society).

In seeking planning approval for their proposed shopping centres, developers typically list the benefits their project will provide. These include the positive financial effects of construction activity, augmenting the municipality's property tax base, and the addition of long-term retail employment within the community. In the first case, there can be little argument that the construction project aids local trades and material suppliers.

The question of benefits accruing from additions to the property tax base and long-term retail employment must be examined carefully. In his review of the impact of regional shopping malls on small cities, Muller suggested, "Regional malls...are explicitly designed to be substitutes for CBDs (Central Business District [*sic*])." He went on to show that within the trade areas of smaller cities, "...a new mall is a zero-sum game with most of the gains at the mall offset by losses in older shopping areas." In his analysis of several small cities, he found that new regional malls caused a drop in downtown retail sales resulting in reduced rent levels and subsequent decline in property values, which resulted in reduced property value assessment and a lowered municipal tax yield from the downtown area. If the new shopping centre is built within the municipal boundaries, its impact on property taxes may only involve a shift from downtown values (reduced) to the new site (increased). However, if the facility is constructed in an adjoining municipality, it will probably result in a net reduction in the property tax base of the urban centre, a situation possibly facing Charlottetown if the local retail market has not grown sufficient to enable the Sobey's store to be absorbed with no critical impact.

In a similar vein, the new shopping centre will provide retail employment - usually for a part-time, lowskilled staff at minimum wages. However, the new facility will attract customers away from the traditional retail outlets in the downtown, resulting in reduced sales volumes and possible store closures. In another study examining the potential impact of a regional mall outside Burlington, Vermont, Muller pointed out that although the new facility would provide 516 full-time equivalent positions, it would do so at a cost of 627 full-time jobs in downtown Burlington - a projected net loss of 111 jobs in the local area. Thus not only does the type of employment change (full-time downtown for part-time in the suburbs), it often does so with a net loss in retail employment, not the increase proposed by developers. This net loss arises from the shift from labour-intensive facilities to more rationalized self-service facilities.

Corporate concentration in Canadian retailing has resulted in fewer major retail chains involved in the business of developing and operating shopping malls. In addition, such concentration leads to centralized purchasing and distribution systems. Typically, the major corporations involved tend to purchase their goods and business services (legal, advertising, accounting, and so forth) in their headquarters' location rather than in the communities where their branch store is located. Hence the incursion of major retailing conglomerates into smaller centres often results in a further erosion of economic activity in local retail support services.

Numerous studies have shown that the detrimental impacts of large shopping malls may outweigh their benefits to communities. However, the degree of impact in any specific situation depends upon the nature and size of the proposed facility and the market it proposes to enter. Thus benefits and costs should be revealed through an independent impact assessment which seeks to measure the specific impact of a particular proposal in a defined market.

While the impacts identified by Mr. Ircha focus on existing businesses and neighbourhoods, we see other impacts of large shopping malls in the land use context that impinge on future planning and development in an area. In many areas, developers have located large regional malls on raw land outside municipal boundaries in order to obtain the advantages of cheap land prices and lower taxes. Their development is achieved at an immediate cost of farmland, far in excess of what is required for the shopping mall. Once the development has begun, settlement patterns alter direction. Suddenly there are other businesses, relocating to take advantage of altered traffic flows, and new residential developments, enticed by the shopping ease nearby. The new regional mall has not just altered consumers shopping patterns, it has altered the whole settlement and land use pattern. A large increase in retail floor space, introduced almost overnight but dispersed in a number of neighbourhood shopping malls may alter consumer shopping patterns with both adverse and beneficial impacts for an area but they do not have the same land use impact for the region. Essentially, the unregulated decision by a single developer to locate a regional mall can become the "tail that wags the dog" in land use for a large area.

The Island version of this scenario was sketched out a decade ago when Emrik H. Suichies prepared his paper on "The Impact of Shopping Centre Development on Prince Edward Island". In his overview on Island shopping centres, Suichies wrote:

> Based on calculations prepared by Development Planning Associates Limited and sales volumes provided by MacLean-Hunter Limited, it is estimated that the total sales in the Province's nine existing centres totalled approximately $150 million during 1978. This represents almost two-thirds of the food and department store sales in the Province during 1978 (65.9 per cent). This impressive market share has been achieved in a short time (15 years) and attests to the success this form of retailing has had in Prince Edward Island.
>
> ....
>
> Consumer surveys undertaken by Larry Smith and Associates and Development Planning Associates indicate that shoppers expressed strong support for downtown areas. However, it is clear that the market share held by shopping centres in some parts of the Province exceeds the 65.9 per cent by a significant margin. This is recognized in the Official Plan of several communities that have been prepared in recent years. The plan for the Village of Cornwall, for example, states . . . "It is probable that the growth of daily shopping services has been inhibited by the competing services in the nearby region."
>
> The plans for East Royalty and Sherwood indicate that the opportunities for further retail commercial development in these communities will be limited because "major shopping needs will be met by large scale facilities in the Charlottetown area". Winsloe's plan states that, in spite of its growing function as a bedroom community for Charlottetown, it expects that its level of commercial services (5 commercial establishments and 3 seasonal ones) will not change much. Several other plans reflect this reality, and underscore the desirability of a higher level of retail commercial activity in the community.
>
> The plan for the City of Charlottetown, prepared by the Charlottetown Area Regional Planning Board, deals at length with the erosion of the economic health of the City's core, as evidenced by the growing retail store vacancies, and serious office

space vacancy rates. It points out that the health and vitality of the core area determines to a large extent the economic and social health of the entire region. It proposes a strategy that will allow the core to regain its preeminence as the main commercial area of the region, and its importance as the Province's business and financial centre, while recognizing the need for commercial development in other parts of the region.

Key elements in this strategy are 1. the desirability of full use of the water, sewer, road, fire protection, etc. services already in place and paid for (rather than duplicate these at great public expense elsewhere), and 2. the need for consideration of the growth in the market for retail services before approving significant additions of retail space anywhere in the region.

The official plan for West Royalty, on the other hand, clearly sees the potential of its retail commercial area in regional and provincial terms. The plan provides for a retail commercial area covering 200 acres by 1989. An area of this size will be capable of accommodating 2.7 million square feet of Gross Leasable Area (at 13,500 square feet per acre). This is almost 10 times the square footage currently available within the community, and 50 per cent more space than the total retail space currently available within the Province as a whole. The plan states that the West Royalty CIC will promote commercial development subject to the resolution of potential road capacity problems. It recognizes that the impact of such development on other communities (e.g. Charlottetown's core) may be negative, but that increases in employment and in the tax base, and expanded shopping opportunities for Islanders may compensate for this negative impact . . .

Under the terms of the Planning Act, each municipality in the Province is entitled to prepare an official plan and regulations providing for major allocations of land to retail commercial use, or any other land use. After the plan as been approved by the Land Use Commission, the municipality may proceed with the implementation of the plan, and may grant building permits.

The pragmatism with respect to commercial development of the various official plans referred to above is reflected also in West Royalty's plan - West Royalty currently does enjoy the location advantages and access that will permit it to attract major retail development, and is seeking to capitalize on it.

A similar comment may be with respect to Sherbrooke, in its relationship to Summerside. However, these location/access advantages tend to be of a temporary nature. Further development may gradually shift the "suburbs", or a new highway bypass may significantly change the accessibility of various areas. These areas may, when their time comes, allocate major tracts of land to retail commercial use and attempt to attract major commercial development.

Under a system where "free enterprise" prevails, and where planning and development policies do not serve as a check, such moves must be expected to take place. They will do so at great expense to the areas that have already been built-up and developed. The costs are rarely born by the original developer, whose pay-back period for the investment(s) concerned will cover a relatively short period. The costs involved will fall primarily upon the taxpayer

-who through public investment, contributed to the creation of more desirable locations,

> *-who will be responsible for the costs involved in extending water, sewer, road, fire protection, etc. services to the new locations, and*
>
> *-who will be responsible for the cost in managing or "revitalizing" the declining areas.* [Emphasis added.]

Although written a decade ago, the Suichies paper illustrates the type of municipal "rivalries" and the lack of coordination and cooperation between municipal and municipal/provincial jurisdictions in land use planning - themes that we found to be a common thread throughout our inquiries.

The dynamics of shopping centres, particularly larger malls in the context of the impact a regional mall may have on a wide area, is a complex one. The many impacts were recognized by the *Report of the Prince Edward Island Commission of Inquiry on Shopping Centres and Retail Stores*. The socio-economic impacts that Report identified at pp. 23-31 add further evidence to the points already cited from Ircha's outline. Although that Report considered the "downtown decline", which has been identified in numerous studies as a corollary of large-scale suburban retail development, as being a socio-economic impact, this trend can also be categorized as a land use impact. Other land use impacts were discussed in the *Report of the Prince Edward Island Commission of Inquiry on Shopping Centres and Retail Stores*, at pp. 20-22, in these terms:

> The most obvious or visible characteristic of the shopping centre is its physical size. While neighbourhood shopping centres can be as small as one acre in size, large regional shopping centres often locate on tracts of fifty to one hundred acres. The actual centre and parking area may be only twenty-five acres but much larger areas are required in order to provide for internal circulation and as a hedge for future expansion.
>
> It can be seen that *relatively large parcels of land are thus taken out of agricultural use (often prematurely) or withheld from other urban uses.* Compared to the benefits provided by the centre, however, these concerns are somewhat minimal. A closer examination must be made to understand *the real extent of the problem. It is not the centre's own use of land but rather its impact on surrounding land uses which creates the greatest concern.*
>
> *Shopping centres by their very nature are inefficient users of land and usually seek the cheapest land possible. This tends to encourage them to "leapfrog" to a location beyond the existing built-up area.* The impact of locating such a development in a "virgin" area can be far-reaching. *The shopping centre acts as a magnet for other suburban development. Land values in the area escalate rapidly and the land becomes too expensive to permit agricultural activities to continue. The centre invariably becomes the focus for new residential and commercial growth, thus extending its land use impact well beyond its own boundaries.*
>
> At this point it is important to point out that shopping centres initially did not cause suburban growth (and its associated problems) but rather were a result of it. *Where a centre is designed and developed purely to serve an established suburban community it serves a valuable purpose, providing convenient services and a community focus for what is often a mass of unrelated residential developments. Problems occur when the*

> *centre locates in an undeveloped area or is of sufficient size to serve more than the immediate market. At this point the shopping centre is no longer responding to suburban growth, it is actually helping to create it.*
>
> *A related issue is the impact of shopping centres on transportation facilities.* The primary determinant of shopping centre location is accessibility. Where new highways or bypasses are built around urban areas to speed circulation, the *major intersections become prime locations for future regional shopping centres.* As mentioned earlier, the centre tends to generate additional commercial and residential growth in the immediate area. This can *create congestion and reduce the effectiveness of the new arterials.*
>
>> "Since shopping centres are usually located at the intersections of relatively high traffic areas, shopping centre facilities and related surrounding commercial enterprises greatly add to the number of turning movements in normal traffic flow. If proper community development standards are not utilized, the new points of ingress and egress may greatly inhibit the efficiency of the intersection to handle traffic."
>
> The problem is even more acute *where the existing traffic facilities are already overburdened or approaching that point.* In this situation, the *development of a shopping centre will often necessitate expensive improvements which are seldom fully (or even partially) covered by the developer.*
>
> Other servicing requirements must also be carefully evaluated. *The costs of supplying police protection, fire protection, sewer and water, garbage collection, and other services to a new shopping centre can be high and tend to increase depending on the distance the centre is from the established built-up area.*
>
> In conclusion it can be said that the majority of land use problems related to shopping centres can be avoided or overcome by intelligent and comprehensive land use planning. *If shopping centres are allowed to develop in an uncontrolled fashion, responding only to the laws of the marketplace, they tend to compound all the worst ills of suburban sprawl - creating an inefficient, expensive and unattractive form of development. If they are properly planned in relation to other land uses, existing and proposed services, and scaled to serve the immediate surrounding market they can be an asset to any community.* [Emphasis added.]

We are of the view that the complex dynamics of major retail development are sufficiently critical to effective long-term land use planning that this matter must continue to be dealt with as a separate element, distinct from other forms of major development.

Accordingly, we recommend

- **THAT a comprehensive land use plan continue to include provisions regulating land use in relation to major retail development and that the sunset provision contained in Section 43 of the *Planning Act* must be repealed.**

Other provisions in Part VII of the *Planning Act* require enhancement if major retail development is to be effectively planned in the future. The recent decision of the Land Use Commission provides illustration of many of the weaknesses underlying the process and procedures set out in the existing legislation.

The first and most fundamental flaw is that the initial approval for the proposed major retail development project rests with the local municipal council. That, in combination with the existing property tax regime, is guaranteed to place the municipal council in a biased position. Approval of the project will enable the municipality to reap high tax advantages. How can the Council oppose such a project unless it contains definite disadvantages for the community? If the municipality were one with an established business core, owned by residential ratepayers, consideration of the proposal might be more balanced. We anticipate that the property tax reform measures recommended elsewhere in this report would address this issue in part by eliminating the municipal competition for commercial tax dollars, competition that has already served to distort land use patterns and decisions in many locales. Municipal amalgamation will also further the resolution of this problem in some locales.

But these changes may not remedy the situation. The present process calls for the municipality to consider the impacts of the proposal, both positive and negative, on the region and the Province, not just the municipality itself. The difficulty this has created for the municipality was recognized by the L.U.C. in its recent decision, for, at p. 6, it stated:

> The legislation places a heavy burden on the Council to reach a decision that is not only in the best interest of its community, but also in the best interest of the region and province. Municipal councils are comprised of elected officials who are responsible to the community residents. It is not unusual to find municipalities competing for new developments that will contribute to the municipal tax base and strengthen the level of services offered to residents. From a purely ethical point of view, municipal councils should have the best interest of the region and province in mind when making development decisions. On the other hand, considering the provincial-municipal structure, it is not unreasonable to think that council's priority must be with serving the interests of it own community. Part VII of the Act deliberately gives a council and each council member the task of serving three masters.

Although the L.U.C. apparently recognized that the municipal council was not the appropriate body to evaluate the impacts of the project, the decision also illustrates that no one else assumed that task. The L.U.C. declined this role, stating, at pp. 6-7:

> The Commission heard numerous comments about the precarious position of the Council in deciding the effects of major retail developments. Despite the fact that it might be an unrealistic expectation for any municipal council to give a completely impartial review from a regional or provincial perspective, the legislators have required councils to carry out the task. Consequently, *it is not for the Commission to judge whether or not the legislators were realistic. The Act makes the duties of council clear. The duty of the Commission is to decide whether or not the effects on the region and province were given fair consideration by* Council. [Emphasis added.]

It would appear from the decision that the L.U.C. felt the Minister had not evaluated the impacts for, at page 17, it stated:

> Section 37 of the Act outlines the procedure to be followed by the Minister in reviewing a development proposal after it has been approved by the council or the municipality. The appellants argued that the Minister failed to satisfy the

> requirements of the Act in that he merely reviewed all documentation without evaluating the impact statement to identify deficiencies in actually determining impact. The appellants argued that the Minister did not assess the positive and *negative impacts in the community, region and province.*
>
> In the view of the Commission, the appellant's argument has merit in that, *within the framework of the legislation, the Minister should assume a greater role in evaluating positive and negative impacts than it has in the past.* However, the Commission finds that at this stage in the legislative scheme, any review process that should have been conducted by the Minister would already have been conducted by the Commission. It would not be reasonable to now send the matter back to the Minister's desk for proper review. [Emphasis added.]

Finally, the L.U.C. implied that other municipalities - which would have had no mandate to examine impacts but which could have taken a role as appellants - had not done so. Accordingly, at pp. 23-4, the L.U.C. stated:

> The Commission could not help but notice that no municipalities have raised any issue relating to this matter and, that at the public meeting held by the Commission, residents of municipalities surrounding West Royalty spoke strongly in favour of the proposed shopping centre. *Assuming municipal councils are aware of the significant land use issues involved* in Part VII, it does appear that other municipalities are not apprehensive.
>
> Considering the circumstances and evidence heard during the appeal, the Commission finds that, from a planning perspective, any negative impacts of the proposed shopping centres on communities and shopping districts should be of limited duration and are therefore acceptable. [Emphasis added.]

Nevertheless, the Land Use Commission was prepared to state, at page 21:

> Despite the lack of substantive evidence or even the parameters to measure community health by, *it is only logical to expect an investigation into the positive and negative impact in community, region and province in terms of illustrating the factors that have the most impact on the health of a downtown or community:* Is the problem competition with shopping centres or lack of variety in business or business type? How much does the health of a downtown depend on retail facility closures? In the Commission's view the *impact statement, because of the strict retail market analysis approach, failed to even attempt to examine these areas of impact.* The evidence heard alluded to the issues but not in a substantive way. The impact statement gives us little insight into what might happen to a shopping area if sales are reduced to just above critical impact. *The Commission finds it difficult to believe there will be no impact in the community, region and provincial levels.* [Emphasis added.]

In other words, the agency given the task of evaluating the impacts of the project (i.e. the municipal council) has a vested interest in approving the project. Once it has done so, the Minister has interpreted his role to one of reviewing the matter to ensure that this agency (i.e. the municipal council) has considered impacts and the Land Use Commission, in turn, saw its role as ensuring both of these parties in the process have performed in accordance with the procedures. Moreover, the impact statement fell short of the substantive investigation it should have utilized for a proper analysis from the land use planning perspective.

Other weaknesses in the process are also illustrated in this decision. Elsewhere in our report we have identified a problem with many municipal units in the Province because they have lacked "capacity" to deal with sophisticated and complex issues. Even though West Royalty has had more experience than many Island municipalities in land use conflicts, it is apparent from the L.U.C. decision that many of the steps it took in dealing with its responsibilities under Part VII of the *Planning Act* raised questions of the Council's capacity to carry out the mandate given to it under the present provisions of the *Planning Act.*

These weaknesses came to light in the decision of the L.U.C. in its discussion, at pp. 13-17:

> Section 32 requires the Council, after reaching a satisfactory financial agreement with the developer, to "engage a consultant to prepare an impact statement respecting the proposed development".
>
> In May, 1986, the Council chose three consultants and requested that they submit proposals to carry out an impact statement on the major retail development proposal. Rory Beck, the Municipal Administrator, forwarded letters to the chosen consultants, and study proposals were received. Council reviewed the proposals and chose Coopers & Lybrand and the team of Larry Smith & Associates Ltd. and Environmental & Structural Design Inc. to do the impact statement. It is clear, from the evidence, that the availability of Robin Dee, noted retail market analyst with Larry Smith & Associates Ltd., was the key reason for the selection.
>
> *The appellants argued that Robin Dee's former relationship with the Developer placed him in a conflict of interest situation, and therefore his study could not be independent.* The appellants further argued that the lack of independence and objectivity was evident when his study revealed that the proposed development would be critical and "advanced his own wishes" with his own recommended proposal. Their contention was that Robin Dee moved from a position of independent consultant to "advocate".
>
> In the Commission's view, *the impact statement is probably the single most determining factor in the Council's and the Minister's decisions. The legislation basically guarantees that individuals are entitled to be assured that the study is conducted without reasonable apprehension of bias. The Commission believes that it is not within its authority to determine this appeal on the basis of reasonable apprehension of bias.* However, it is the Commission's view that it can consider this prior relationship in terms of weight or independence to be given his evidence, just as any other aspect of Dee's credentials or background. In its findings on the matter, the Commission considered the following: the high professional regard given to Dee by the other expert witnesses; the limited number of consultants with equivalent expertise in the field of retail market analysis and the consultant's apparent indepth knowledge of the local retail market. In the final analysis, the Commission finds it difficult to believe that such a nationally noteworthy professional in the field of retail market analysis would bother jeopardizing his professional integrity to ensure the shopping centre is built. Also, the Commission finds that it is not unusual for such a professional consultant to offer Council his suggestion as to what project might be able to enter the local market. The Commission believes that if the consultant could not suggest, based on his findings, what might work, the developer would be relegated to mere guess work and endless plan revisions until he struck the right concept.

> Section 35 outlines the criteria to be used by Council when making its decision on the major retail development proposal. The appellants raised a number of objections to the decision-making process followed by the Council.
>
> *The appellants alleged that the Chairman, Bennett Carr, was biased in favour of C.H.D. Investments (1987) Inc. in that he had purchased land from the developer for the development of a building to accommodate his insurance business. The appellants argued that Carr was in a conflict of interest position and claimed a reasonable apprehension of bias existed in regard to his participation in the decision-making process.*
>
> With regards to the issue of reasonable apprehension of bias, *it is the Commission's opinion* that, as in the case of Robin Dee, *it does not have the authority to rule on the matter.* In the Commission's view, the conflict of interest issue is merely what can be termed a "community of interest" that all other West Royalty business people located in the area might share in seeing new development come to the Community. Carr did not stand to benefit from the development of any more than any other business person carrying on business in the shopping area. Although implicit in the evidence, it is clear to the Commission that Carr's predisposition toward development was well known. The Commission finds that this type of predisposition is not in itself grounds to quash a planning decision of municipal council.
>
> *The appellants argued that the public meeting did not consider the development proposal that was, in the final analysis, approved by the Council. According to the evidence, the development approved by the Council was significantly different than the one proposed by the developer and considered at the public meeting. There is little doubt that the plans for the development were substantially different.* Plan #8709 reflected a significant increase over Plan #8507, and the approval of a 152,500 square foot shopping centre represented significant down-sizing. However, *the Commission rejects the notion that the decision of Council should be quashed because it approved a smaller development.* In the Commission's view it is normal for a municipal council to negotiate with developers and alter original proposals. In fact, the Council's administrator raised a number of issues, related to phasing, with the consultant in reaction to comments and concerns identified during the public meeting. *The Commission finds the Council properly carried out its duties during the approval process especially considering the heavy burden the legislation places on the council to consider the interests of not only the community but the region and province.* Based on the record and evidence heard during the hearings, the Commission rejects the argument that the Council failed to consider positive and negative impacts in the community, region and province.

We do not wish to undermine the findings of the Land Use Commission on these issues. It was the L.U.C. which sat through 97 days of hearings and had the opportunity to hear and evaluate the witnesses and documents. Our task is to evaluate how the process can be perfected for future situations. In that regard, the issues commented upon by the L.U.C. in its decision at pp. 13-17 leave no doubt that municipal councils cannot properly cope with the heavy burdens imposed upon them by Part VII of the *Planning Act* and the Land Use Commission has interpreted its existing powers in such a way that the Commission has rendered itself powerless to remedy defects emanating from the municipal and provincial levels.

No doubt there are those who would now suggest the controversies over major retail development are at an end, that the current expansionary activities combined with the overabundance of commercial rental space have put an end to this type of development for the foreseeable future. While we acknowledge the possibility such predictions may prove true, we do not accept this to be an excuse to avoid reform in the planning process in relation to major retail development.

In this regard, we must note several important factors. First, those who argue the end of major retail expansion based on such factors as real increases in disposable income, may not be taking into account the dynamics and complexities of major retail development, including its propensity towards overstoring by developers whose objective is not retailing but development *per se*.

Secondly, we are of the view that major retail development is not simply a Charlottetown-sited issue. We foresee the possibility of a major retail development issue arising in relation to the Borden-Charlottetown route should a fixed link proceed. Depending on the transportation decisions and settlement patterns that evolve in the years ahead, a major retail development controversy could arise in relation to the Borden to Cavendish or the Cavendish to Charlottetown corridors. Pooles Corner or the Cherry Valley area are other possibilities. Lest we be scorned for such ideas, we wonder if any observer of 25 years ago would have been regarded with any credibility if he or she had pronounced the (then) new Ellis Brothers Centre as but a small wave of the future and predicted how many larger waves would soon follow!

Finally, we point out that the best timing for proper planning is not in the midst of a controversy but when no crisis is looming. That is when decisions can be made without personalities and hidden agenda entering the fray. Planning is then done in the mode of "being prepared", rather than as an exercise in attempting to close the barn door after the proverbial horse has been stolen.

In light of these considerations, we are of the view that the weaknesses apparent in the regulatory controls relating to major retail development must be remedied.

It is our opinion that major retail development projects must be restricted to incorporated municipalities that have official plans containing provision for major retail development. We do not anticipate this will create difficulties, for, in the event a developer wishes to locate on a site that does not meet this criteria, the municipality can adopt or amend its official plan, and/or the site (if part of an unincorporated area) can be annexed to an adjacent municipality. However, such an initial restriction we regard as essential to avoid the development of major retail sites in rural areas. Development needs to occur in close proximity to developed, settled areas with appropriate infrastrucutre, not where a developer can take advantage of raw, rural land.

Even though major retail development is confined to municipalities with official plans, we are of the view that it is the province, and not the municipality, that must accept the major responsibility for dealing with this issue. While approval of the municipality must be a fundamental pre-condition before the province permits the development to proceed, the province must bear the responsibility for issuing the building permit. The impact statement must be prepared for the province (and paid for by the developer) and development agreements must be triparty agreements, involving the province, the municipality and the developer.

The substantive requirements in relation to both impact statements and development agreements must be provided in legislation. The essential components of an impact statement must include information on land use effects arising from the development. While a retail market analysis may be a part of the impact statement, we are of the view that traffic and settlement patterns, transportation modes, infrastructure in the area, police and fire protection, sewer and water services, the impact on agricultural land and on land prices are among the subjects that should be addressed in an impact statement.

It is essential that development agreements ensure that it is the developer who bears a fair share of the development costs, not only in terms of costs that impinge on the development but also the more indirect ones. If, for example, the development will result in the need to enhance nearby highways or to control traffic flows more intensively, these costs must rest with the developer - not the taxpayer - and the development agreement must ensure that this is what transpires.

We are particularly emphatic that development agreements must contain a landscape/design component. When we had the opportunity to view a number of American sites, we found a marked difference between well-planned communities that insisted on landscape/design standards and those which did not. Nowhere was this more evident than in respect to retail shopping sites. Much of the landscape/design did not require extensive financial outlay on the part of the developer but it did require some thoughtful creativity, rather than the wholesale adoption of a design that was used elsewhere. For example, one of the most effective changes we noted was the requirement that parking be provided behind, not in front of, shopping malls. This allowed the building and any greenery around it to be the visual focus, not a parking lot and a collection of automobiles. Moreover, it brought the shopping spaces closer to streets, accentuating a more pedestrian-friendly image for stores. Other landscape/design features that were applied with excellent results required storefront windows and green spaces on the development site. We are convinced that elements of this nature should be part of the essential standards in any development agreement involving major retail development.

We see no reason why some of the appeal provisions for major retail development should differ from other appeals procedures before the Land Use Commission. The time in which appeals may be launched should be synchronized. The appeal process should be available to any "dissatisfied" person. Permits, in any event, should be suspended pending the outcome.

The present legislation, in our view, contains two major loopholes that must be plugged. At the present time, the legislation can be avoided entirely or its intent may be thwarted by the use of incremental stages. It is equally possible to evade the thrust of the legislation by combining retail space with areas purportedly designed for other usages. The definition of major retail development must be refined to remedy these deficiencies in its controls.

The legislation does not contain adequate provisions in relation to those who choose to proceed onwards in the face of pending appeals or who fail to abide by the terms of development agreements. Injunction relief by the courts is not always a feasible option, for the requirements to obtain an injunction extend far beyond the necessity of demonstrating that work has not ceased in the face of a pending appeal process. Legal action for breach of a development agreement may not be what is necessary to remedy a problem. The L.U.C. must have power to impose conditions on a developer and to enforce such conditions. Moreover, there must be explicit power in the legislation to grant remedial orders, including demolition orders where work has proceeded pending the outcome of an appeal procedure or in the face of violation of L.U.C. conditions.

In preparing what may seem to be drastic recourse, we point out that such measures are common in other jurisdictions to ensure compliance with planning legislation. Indeed, we had a firsthand opportunity to see an example of such enforcement during our out-of-province tour. After meeting Mr. Arendt at the Centre for Rural Development, he took us to a local subdivision where a number of completed but vacant homes were awaiting the final disposition of a demolition hearing arising from a developer who had proceeded with construction before proper approvals for building them had been finalized. We were advised that enforcement measures such as these - with the will to use them, if necessary - must be part of any serious planning regime that is to have the credibility that is a requisite to successful land use planning.

Accordingly, we recommend

- **THAT the regulatory controls relating to major retail development be revised so that major retail development projects are restricted to incorporated municipalities with official plans that contain provision for major retail development.**
- **THAT the province accept the responsibility for approval of all major retail developments.**
- **THAT approval from the municipality where the development is to be located be a prerequisite to approval by the province.**
- **THAT an impartial impact statement be prepared for the province at the developer's expense.**
- **THAT the essential components of an impact statement be included in the legislation and mandate a review of land use impacts and public costs arising from the development.**
- **THAT the required elements of a development agreement be included in the legislation.**
- **THAT any such agreement be a tri-party agreement between province, municipality and developer.**
- **THAT the developer be required to bear the indirect public costs arising from the impact of the development.**

- **THAT landscape/design standards be among the components of any development agreement.**
- **THAT the appeal procedures in relation to major retail development and other major developments be synchronized.**
- **THAT the definition of major retail development be revised to prevent evasion of the regulatory controls.**
- **THAT the legislation contain strengthened mechanisms to place and enforce terms and conditions on development, including the explicit power to issue demolition orders where necessary.**

Chapter 11

SUBDIVISIONS

During our public hearings, many of the individuals and groups which appeared before us indicated they disliked ribbon development. They felt it was detrimental to the aesthetics of the landscape, to highway safety and efficiency and even to the cost-effective provision of public services.

Government has imposed several provisions in the *Planning Act* apparently aimed at preventing ribbon development but these measures have frequently made it worse.

Certainly there are measures, within and without of the *Planning Act* that could curb ribbon development - but they may not be palatable to the public.

Traditionally Island farm houses have been built in the countryside in a density pattern that is greater than in most agricultural areas. That has been one of the charms of rural P.E.I. But, on reflection, what has made that settlement pattern so appealing while the current one is coming under so much criticism? The central difference, in our view, has been the distance dwellings were placed from roads. At one time, the farm house was situated so as to be the central focus of the farm. There were one or more fields in front and several behind the farm structures. It all made logical sense, minimizing the distance between the farm nucleus and its most distant pastures and, hence, minimizing travel time around the property. While this meant rational planning and operational efficiency, it also resulted in long farm lanes - a small price to pay in an age when the focus of life was on the farm itself and not elsewhere. But as times changed, long farm lanes became a liability and houses moved closer to the highway. For the non-farming ruralite, the shorter the driveway the better, for length meant more costly snow removal and paving costs for the homeowner.

We tested our theory as we attempted to grapple with some means of describing ribbon development. We found our theory valid, in our opinion, although it brought us no closer to a satisfactory definition of ribbon development. Why, we asked, did a particular stretch of bungalows with which we were all familiar look better than most? The houses, although in a uniform row, were further back from the road than is the usual standard. Moreover, a grove of trees parallel to the length of the ribbon of houses, marked the back lot lines and gave the whole setting a more pleasing effect. We also agreed that the corridor effect which characterizes ribbon development is exacerbated whenever a highway is widened. While changes in the location of dwellings by increasing minimum setbacks would improve the aesthetics, we were not convinced that tinkering with such standards would accomplish much in addressing the roots and magnitude of the problem, unless the increases were at a level likely to meet with widespread public opposition because of snow removal considerations and the additional land needed to affect the change.

Table 1 provides information on the number of approved residential lots and residential building permits supplied to us by the Department of Community and Cultural Affairs.

TABLE 1

Year	Year Round Residential Lots Approved	Year Round Residential Building Permits Issued
1988	352(225[1])	670
1987	380(233[1])	638
1986	289(189[1])	598
1985	257(183[1])	542
1984	251(200[1])	500
1983	274(232[1])	481
1982	232(186[1])	409
1981	221(170[1])	406
1980[2]	727(503[1])	343
1979	727	984
1978	876	970
1977	1415	1065
1976	1379	1466
1975	975	826
1974	1861	1218
1973	--[3]	--[3]
1972	732	684
1971	640	469

1. "First lots off". These are single lot applications which do not require subdivision approval.

2. Nine-month period ending December 31. Previous to 1980 figures were for fiscal year. Figures for 1980 and subsequent years are for calendar years.

3. Data not provided.

SOURCE: Department of Community and Cultural Affairs

Table 1 shows that 11,588 residential lots were approved in 17 years, including 2121 residential lots that were single lot applications not requiring approval during the nine-year span between 1980 and 1988. The data shows also that 12,269 building permits were issued for year-round residential building permits.

Other data with respect to statistics on residential building is found in a document, prepared by the Land Use Commission in 1986, entitled "Policy Proposal for Summer Cottage Development in the Coastal Zone". This indicated that for the interval between 1968 and 1984, 12,429 lots were subdivided for permanent single-family dwellings, while 11,723 building permits were issued for single-family dwellings. A more focused examination showed that between 1978 and 1984, 2553 single-family dwelling lots were created while 4093 single-family building permits were issued. [Land Use Commission statistics on 2553 single-family dwelling lots is significantly less than the amount reported by

Community and Cultural Affairs. Table 1 indicates 3308 single-family dwelling lots were approved for the period 1978-84, a number that is higher by 755 lots. The Department of Community and Cultural Affairs verified their numbers had been double checked and confirmed their accuracy.]

The more recent data, when added in to these numbers, would indicate 13,707 lots were subdivided for permanent single-family dwellings between 1968 and 1988, while 14,171 building permits were issued for single-family dwellings in the same interval.

Between 1980 and 1988, 2983 year-round residential lots were approved. The number of "first lots off" - single lot applications which do not require subdivision approval - totalled 2121 between 1980 and 1988. Clearly the "first lots off" represent a considerable proportion of residential lots; in the nine-year interval, they accounted for 41.55% of the residential lots.

While there is no indication of how many of these lots would be in the countryside and how many would be in municipalities or other density clusters of housing, the high incidence of "first lots off" suggest a considerable proportion of these lots are found in rural areas. The changing face of the countryside landscape is confirmation of this assumption.

We have assumed in this report that land policies that would encourage more Islanders to live in towns and villages, rather than building just outside municipal boundaries, would be more cost-effective. We have also assumed it to be most cost-effective to prohibit new residential construction on unpaved roads than to face future paving demands that may well exceed the capital cost of the housing.

Except for the "Report on the Prince Edward Island Program and Expenditure Review Commission", we are unaware of any current study by the province that would determine density-related public costs.

What are the fiscal impacts of residential growth? Conventional wisdom is that growth is a positive force and that residential growth, by enhancing the tax base and by cutting per capita costs of services, should be a public goal, at least in most situations. Some recent studies, however, have cast shadows of doubt on these traditional beliefs. With the present policy of essentially unfettered ribbon development in the Island's countryside, combined with financial restraint realities, some of these findings from other jurisdictions need to be considered in moulding land use policies.

We were directed to two such studies, the first being a paper entitled "Density-Related Public Costs", prepared by the American Farmland Trust. This study was undertaken to determine how the public purse fared when residential housing patterns sprawled into the countryside.

The issues involved in density-related public costs and the objectives of the study were outlined in this passage, at p. 1:

> The conversion of agricultural and other rural lands into residential communities generates economic, social, and environmental changes. Of special concern to local governments are the changes in public costs and revenues associated with such

> development. Public officials who are responsible for planning, zoning, raising revenues, and providing public services have sought better ways to estimate the net fiscal impacts of residential growth, in order to make more informed decisions about the future quality of life in their communities.
>
> Several different approaches to fiscal impact analysis have been developed and applied; in virtually all cases the increased public costs (for education, health, welfare, safety, and other public services) associated with new residential developments have been shown to *exceed* the increased public revenues generated by them. A few studies have also suggested that the net public costs resulting from low-density or "sprawl" development patterns are likely to be higher than those resulting from higher density or "cluster" development for the same number of dwelling units. [Emphasis original.]
>
> Although this hypothesis should be of central concern to county governments faced with residential growth pressures, it has rarely been tested using actual county-level data, nor has any standard methodology been developed for doing so.
>
> The primary objective of this study, which was sponsored by the American Farmland Trust and the government of Loudoun County, Virginia, was to develop a methodology, using actual county data wherever possible, to estimate not only what the net public costs of new residential development in the county were likely to be, but also whether these costs could be expected to vary significantly with the density of such development, and if so, how.
>
> This objective was achieved, with *results* that *show a net public revenue shortfall from new residential development in Loudoun County for all densities tested - from one unit per five acres to 4.5 units per acre. Net public costs were estimated to be approximately three times as large per new dwelling unit for the lowest density as for the highest density within this range.* [Emphasis added.]

A preliminary review of the literature, found at pp. 9-10, sets the stage for an in-depth look at a particular county in Virginia:

> We reviewed the published professional literature on ways of estimating the costs of different patterns of urban and suburban development. One recent publication by Burchell and Listokin, 1980, *Practitioner's Guide to Fiscal Impact Analysis,* provides a lucid and useful overview of several methods for projecting direct public costs and revenues associated with new development. In general, *these methods employ averaging or aggregation techniques which obscure the potential differences in public costs which might arise from different development densities.* However, the analysis we later developed makes partial use of two of the methods they describe - the Per Capita Multiplier and the Case Study methods.
>
> Perhaps the most notable attempt to assess the costs of different types of residential development was *The Costs of Sprawl*, a 1974 report prepared by Real Estate Research Corporation for the Council on Environmental Quality (ECQ). This study, which was an analysis of prototype development patterns, produced estimates of the economic, environmental, and personal costs associated with different defined neighbourhood types and community development patterns. *The study concluded that "planned" communities with higher densities result in lower economic costs, environmental costs, natural resource consumption, and some other personal costs for*

> *a given number of dwelling units.* However, the study was based on a number of assumptions about community infrastructure and service requirements that have been questioned and which limit its direct applicability to actual communities with differing household characteristics, infrastructure, and development styles.
>
> A 1981 report by the Urban Land Institute entitled *The Urbanizing Countryside* cites *the prevalence of inefficient land development in rural areas.* This report also suggests that *the initial public costs of low-density development are not great, as long as such development does not overtax existing roads, schools, groundwater supplies, or septic percolation capacities. However, the report states, typical rural development patterns may create conditions which are difficult and costly to overcome in later years because needed improvements such as roads, water and sewer lines, and other public facilities may be constrained by existing development and/or prohibitively expensive.* There are no methods included in the paper for calculating these costs.
>
> A recent paper on farmland preservation presented by Prof. John Hutchinson of the University of Virginia suggests that legal and economic factors must be carefully considered in constructing any viable program for protecting agricultural land use. There appears to be a market threshold for rural land (in the range of $5000 to $6000 per acre) above which continued agricultural land use is usually not feasible on a long-term basis, and residential or other urban uses gradually become dominant. It is thus particularly important, he concludes, that zoning or other designation of land for ongoing agricultural use be based on solid evidence of past and present agricultural profitability, general community acceptance of the land as farmland, and lack of significant speculative ownership.
>
> In addition to the above information, we reviewed several other publications. These included three guidebooks or manuals designed to be used for cost/revenue analysis in specific regions of the country: the State of Maine, Northern Virginia, and DeKalb County, Illinois. . . . Each of these textbooks makes use of information and techniques which are suited to the locale for which it was prepared; this approach has the advantage of being easier to use in that locale. However, even with the handbook for Northern Virginia, we found that the methods of generalized cost estimation used could not be applied directly to answer the principal question raised in this study, that is, whether there are significant differences in public costs on a per-capita or per-household basis associated with differences in the dwelling-unit density of new communities.
>
> In summary, *we found that although much has been written on fiscal impact analysis over the past 20 years, relatively little has been done to develop a practical methodology to calculate net public costs estimates for specific patterns of residential development at the county level.* [Emphasis added.]

The study involved a detailed cost analysis to obtain or to estimate direct public costs, on a per capita or per household basis, for the major categories of public expenditures affected most directly by additional residential growth. These categories included public school costs, public road maintenance costs, water and sewer construction/maintenance costs, law enforcement costs, fire and rescue service costs, and health and welfare costs. Using four levels of residential densities, the study endeavoured to link the unit costs with the different density levels. Since water and sewer services as well as public road maintenance and construction, categories most sensitive to density-related public costs, were carried out by the State of Virginia, they did not factor into the findings of the study which was directed at the county level. Nevertheless, the conclusions and recommendations contain a number of startling findings and creative suggestions that could be applicable for other areas where ribbon development in the countryside is pronounced. These are found at pp. 39-41:

> A. CONCLUSIONS
>
> * It is possible and feasible, based on our experience in Loudoun County, to construct a fiscal impact analysis at the county level for a given residential development at different densities, using existing data for major categories of public costs and revenues.
>
> * The results of this analysis show that over a wide range of densities (0.2 units/acre to 4.5 units/acre) the ongoing public costs of new residential development will exceed the revenues from such development.
>
> * For Loudoun County, the average annual revenue shortfall or net public cost to the county would be approximately three times as large ($2200 per dwelling) from the lowest-density residential community projected in the study as from the highest-density community ($700 per dwelling).
>
> * County revenue shortfalls resulting from the conversion of rural agricultural or forest land to residential development will have to be made up either by reducing existing public services, raising taxes, attracting additional commercial revenues, or through some combination of these methods.
>
> * *Relatively low-density residential development (one to five or more acres per dwelling unit) generates higher net public costs primarily because it requires inefficient expenditures for public school operating, instructional, and transportation services, and also because it creates potentially higher public liabilities for road maintenance and future provision of public water and sewer services.*
>
> * *Relatively high-density residential development (two to five or more dwellings units per acre) is almost certain to be located in areas served by or adjacent to existing public water and sewer systems. Public schools built to serve such communities can be larger and more economical to staff and to operate; the majority of students can walk to and from these schools, which greatly reduces school transportation costs.*
>
> * *Low-density residential subdivisions, usually located in rural areas, remove relatively large amounts of land from agricultural uses while requiring public services (education, health and welfare, public safety, etc.) which are similar on a per-dwelling or per-capita basis to those required by high-density subdivisions that convert far less land from existing agricultural or other economic uses.*
>
> B. RECOMMENDATIONS
>
> * *Loudoun County has a stated planning objective of maintaining an existing agricultural economy wherever it is viable, while minimizing the revenue shortfall resulting from new residential development. To help achieve this objective, zoning and other land use policies should be adopted to encourage and direct new residential development to locate within or adjacent to existing urban and residential development where adequate community water and sewer service is already available, and where higher (and thus more cost-effective) housing densities are most feasible.*

> * If a county government seeks to estimate more accurately the net public costs of residential development in the future, *it should consider compiling data for some of the major cost and revenue categories used in this study for specific regions within the county on an annual basis.* For Loudoun County, the existing school districts provide such a breakdown for school-related costs; it would, however, be *useful to know whether law enforcement, fire and rescue services, and health and welfare costs vary from one part of the county to another on a per-capita or per-dwelling basis, and if so whether they vary in some direct relation to the density of residential communities.*
>
> Improving the county's capability to estimate costs of future development would entail annual reporting on a district or area basis of major services provided and expenditures made. Such districts need not be the same for all services; data could be compiled for existing police patrol districts, fire and rescue service zones, etc., as long as the data could be related to the density of residents and/or dwelling units in these districts. Compilation of this information would require some relatively minor changes in recordkeeping, but should enable county departments to relate their costs and their budget projections more closely to current and anticipated patterns of residential growth.
>
> * Additional measures, more specific to Loudoun County, which could help achieve the objective of maintaining agriculture and reducing rural "sprawl" development, include:
>
> -- strengthen existing Agricultural and Forestal District rules to *preclude residential subdivisions more dense than one unit per 25 acres* and extend the term for such districts to periods of 10 or more years;
>
> -- implement the Density Transfer program set forth in the draft Rural Land Management Plan, and continue to seek authority from the state to implement a program of Transferable Development Rights (TDRs) which is based on the existing Agricultural and Forestal Districts.
>
> -- *substantially increase the assessed value of undeveloped land when it is platted for low density residential use, increase the fees for building permits and permits for wells and septic systems in rural areas,* and reserve such funds for extension of public water and sewer systems in areas designed for high-density development.
>
> . . . Although some of our findings reflect the specific conditions in Loudoun County, Virginia, we believe that *the general observations and conclusions we have presented are applicable to many other counties where large areas of land are shifting from rural to urban uses.* [Emphasis added.]

In Canada, the Community Planning Advisory Branch of the Ontario Ministry of Municipal Affairs also explored the issue of public costs in relation to residential growth. Its "Financial Analysis of Residential Development: A Case Study for Brighton Township" was completed in 1988. This report did not consider public costs from the standpoint of density in the same way as the American Farmland Trust, but there are conclusions relevant to the issue nonetheless. The study had two purposes: "to broadly determine whether residential development pays for itself, and to demonstrate the ways that land use planning can contribute to the financial health of a municipality". The study found that "[i]n rural areas, farm properties play the same role as industrial lands in urban areas" but they were subsidizing residential properties and the greatest losses were on properties less than two acres in size. The results pointed out, for example, that "[t]he cost of school busing, while only 8% of the local school expenditures, is highly dependent on planning decisions". By completing a cost-benefit analysis on different property types (residential, cottage, farmland, farm residences, vacant land and commercial development), the study concluded it had "conclusively shown that residential development does not pay for itself".

This is not to say that the conclusion would be the same in another area where the costs and benefits are different. However, both the study by the American Farmland Trust and the case study for Brighton Township do explode the myth that residential growth is necessarily financially beneficial to the public purse.

Equally important is the analysis in determining land planning policies. The development implications for managing growth are discussed at pp. 39-40 in these terms:

> Managing growth, and its fiscal implications, requires an appreciation of the consequences of development and a long term outlook. *In the short term, strong building activity and land severance activity creates a financial boom for the municipality. This is partly an illusion.* The influx of cash for building permits and rezoning fees just covers the costs of inspection and processing.
>
> *The real short term gain comes from increased assessment on new lots. These gains can be short lived.* As long as a lot remains vacant, it generates an average net benefit of $7 per year. *As soon as a residence is built upon it, that small benefit is lost and the property then becomes a net loser forever more.* . . .
>
> An individual creates a building lot as an investment for himself, not for the benefit of the municipality. The severance of a small lot from a farm residence is a powerful example of the financial consequences of development. The farm residence, home and farm land, have a relatively high assessed value and produce a $44 annual net benefit to the Township. The severance creates a vacant lot, which provides an additional net benefit of $7. When a home is built on the lot and reassessed, the combined net benefit of the single family home and the farm residence is still positive at $12. . . . The farm is subsidizing the municipal costs of the residential property.
>
> Figure . . . illustrates the same process as above for the creation of a second building lot from the farm. In this case, the net benefits associated with the farm are not great enough to cover the costs of both additional residential properties. This is not to say that every farm in the township could support one severance but not the second. The net benefits from the farming community are currently being fully used to cover the losses on existing residences. In fact, the existing surplus in net benefits would not cover the municipal costs if 75% of the present vacant lots were built upon.
>
> The process of cottage conversion to permanent use also has negative financial results, . . . Cottage property produces a positive net benefit, mainly because of the extremely limited amount of services they receive. We expect that, if these become permanent homes, there will be full time residents and that they will receive full services. We can also expect that the cottage might be used permanently for some time before it is re-assessed as a residence. As a result, the net loss is substantial while it is used year round but assessed as a cottage. Upon reassessment, the net loss is reduced to that of a normal single family residence. [Emphasis added.]

The results of a study such as this can have a vital effect on planning decisions. For example, based on the findings of the study it was suggested that a residential development that threatened a farming operation should be prevented and since the majority of farming properties were located in a particular area of the Township, residential development in that area should be curtailed.

The importance of planning to control the future costs of growth were illustrated, based on the conclusion that planning decisions which concentrate development help minimize expenditure increases on municipal and school services. A number of examples were provided, at pp. 46-7:

> *Planning decisions that concentrate development help minimize expenditure increases* on municipal and school services.
>
> *The case of school busing is the most obvious example.* One hundred new homes scattered around the Township could require the purchase of a new school bus for approximately 30 new students. The additional net loss to the Board of Education on the new homes would total $3,600 annually. One hundred new homes located around an existing school would not require any busing and would reduce the net loss on a residence.
>
> *Concentrated development patterns also restrain increases on road expenditures.* In the short term, new development does not increase the cost of road maintenance. This holds true only if the current road standard and level of maintenance does not change. Any improvements in service alter the economics of the situation. *A compact development pattern minimizes the road distance to be improved and thus will require lower expenditures than for a scattered development pattern.*
>
> Planning creates opportunities for community development by making certain locations or activities more profitable for potential investors. The control of access to an area is the first key planning variable for affecting profitability. . . .
>
> *The second key variable works in conjunction with the first. Planning can be used to concentrate market areas or to group similar activities. This makes it more profitable for commercial or industrial uses to locate in an area.* For example, a grocery store will locate where it can be supported by a sufficient concentration of people. If access to the store is good, the concentration can be more dispersed. New commercial, industrial or even tourism uses will cluster near existing establishment in order to take advantage of established markets.
>
> The current pattern of development is typified by residences scattered around the Town of Brighton. This pattern strengthens only the Town's commercial market and fails to establish sufficient population concentrations to attract commercial development elsewhere in the Township. *A municipal planning policy limiting scattered development would encourage greater community development.*
>
> Concentrating development in the hamlet of Smithfield, for example, could create a small market for commercial development. If the commercial uses were distinctive enough, they could even appeal to a tourism market.
>
> The financial health and future of the Township partly depends on Council's ability to channel growth and to foster a better assessment balance. Protection of the existing base will provide stability. Community development creates opportunities that will provide substantial and long lasting financial benefits to the Township.

It is apparent to us that sound policies with respect to residential housing cannot be determined until such time as the province determines the public costs of servicing residential growth according to various densities and in various parts of the province.

At the same time, whatever these results show, the aesthetics of the countryside must be sustained.

We do not have the answers to these perplexing questions. However, during the course of our investigation, we learned of several jurisdictions using rather creative models that we commend for further consideration. In particular, we were attracted to the simple growth management technique employed in Hartford, Maine, where a prescribed number of building permits were set as an annual maximum and any competition for additional permits above the monthly allowable limit was settled by a point system that farvoured long-term residents of the community. We were also impressed by the rules imposed in the Niagara Escarpment of Ontario where farmers were allowed to subdivide one lot for a retirement home; additional lots were allowed on a formula that depended on the size of the total acreage and the zoning for the particular area. Policies to curb ribbon development and encourage rural growth to take place in small rural hamlets have been effected as well in a comprehensive land use plan in Kings County, Nova Scotia. In the province of Quebec, major residential subdivisions can be developed only in areas adjacent to municipalities and then only if there is municipal consent as well as agreement from the agricultural land protection agency. Rural planning that involves cluster housing, open space zoning and more creative development is another possibility. Land use plans can limit residential housing or commercial development to "nodal points", such as intersections. Or, road corridors can be divided into segments where varying degrees of residential density (or commercial intensity) is permitted. These examples are described in more detail in Appendices C and D of Volume II.

We would expect that no single formula is going to "work" successfully on a province-wide basis in all rural areas. However, we would anticipate that as part of a comprehensive land use planning exercise, alternative models would be developed from which choices could be made in conjunction with many other local features in any given area.

Accordingly, we recommend

- **THAT the province examine the public costs of residential development at different levels of housing density.**
- **THAT, pending the completion of such a study, there be no approvals granted for any major subdivisions outside the boundaries of towns and villages unless the property is first annexed to the adjacent municipality.**

The subdivision of land, usually within the coastal zone, is an issue that in many respects creates far more concern for the province and its landscape than residential subdivision and ribbon development.

We are convinced that the nonchalant manner in which land has been carved up in the creation of thousands of cottage lots over the past two decades will result in numerous problems for the province in the future.

Some of these concerns have already manifested themselves. The destruction of the province's most scenic landscapes is already becoming evident. While we consider the aesthetic dimensions of this issue elsewhere in our report, here we wish to focus on the land use and land ownership aspects of the issue.

Table 2 provides statistical information on cottage subdivisions in the province.

TABLE 2

Year	Summer Cottage Lots Approved	Summer Cottage Building Permits Issued
1988	35[1]	191
1987	110	113
1986	179	146
1985	170	122
1984	91	93
1983	61	112
1982	210	86
1981	280	108
1980[2]	695	95
1979	430	104
1978	373	132
1977	461	198
1976	520	192
1975	203	163
1974	285	135
1973	--[3]	--[3]
1972	662	146
1971	1103	118

1. Applications for approximately 400 lots were received late in the year and were still pending.

2. Nine-month period ending December 31. Previous to 1980 figures were for fiscal year. Figures for 1980 and subsequent years are for calendar years.

3. Data not provided.

SOURCE: Department of Community and Cultural Affairs

Table 2 shows 5868 cottage lots were approved in 17 years and the 400 applications still pending at the end of the reported data, if approved, would boost this total to 6268 cottage lots.

The data also shows that 2254 building permits were issued for summer cottages. If all summer cottages were built on approved cottage lots - and some of them may have been built on land that did not require subdivision approval - Table 1 suggests a surplus of some 3614 cottage lots at the end of 1988. (Again, if the 400 lots pending approval are added into these figures it would seem there was a surplus of some 4000 cottage lots at the start of 1989. In addition, the Annual Report for the Department for 1989, which encompassed only the interval between March 31, 1989, and December 31, 1989, showed some 350 applications pending "mostly intended for summer cottage use".)

A "Policy Proposal for Summer Cottage Development in the Coastal Zone", prepared by the Land Use Commission in 1986, suggests that the surplus of cottage lots is far in excess of this. The document stated:

> Figures compiled from the annual reports of the Department of Community and Cultural Affairs, for areas under provincial jurisdiction, reveal the following: *for the period 1968-1984, 8621 lots were subdivided for summer cottage use, while 2129 building permits were issued for summer cottages . . .
>
> *for the more recent past, 1978-84, 2140 summer cottage lots were subdivided, while 730 building permits were issued. The ratio of lots created to permits issued is roughly 3:1.

The more recent data, when added in to these numbers, would indicate 9115 lots were subdivided for cottages between 1968 and 1988, while 2701 building permits were issued for cottages in the same interval. (And, if the approximately 400 lots pending approval are added into these totals, the number of lots for cottages rises to 9515.)

The Land Use Commission discussed this gap in these terms:

> In part, the gap between summer cottage lots created and permits issued is understandable since a lot may be purchased well in advance of actual building. Given a relatively low price for lots, many people may succumb to the dream of a summer cottage; the dream is often never realized.
>
> At the same time it is reasonable to assume that many lots are purchased by people who have little real intention of building but who hope to profit from the general rise in value of shorefront property. The figures for a subdivider who specializes in sales of large lots with shorefrontage to U.S. buyers are instructive. Between December 13, 1978 and November 21, 1985, the subdivider created 282 lots, sold 246 of them, yet building permits were issued for only 10 summer cottages. Under U.S. tax law, interest paid on a mortgage for property purchased abroad is deductible from Federal tax. It is recognized that speculative intent is easy to allege but difficult to prove.
>
> The fact remains that summer cottage lots continue to be approved at a rate of 300 lots per year, with few effective controls on the location, amount or form of development. The Commission suggests that, given the significance of the coastal zone as a part of the natural heritage of all Islanders and its significance to the tourist industry, a more orderly system of development is needed within the coastal zone. Even though, at current rates of subdivision, *it may be many decades before most of the province's shorefrontage is alienated, continuing haphazard development*

> *closes off future options, threatens the existence of natural and fragile areas and, where land is subdivided but not built upon, provides only a pittance in tax revenues to the economy of the province. . . .*
>
> The necessity for well-planned summer cottage development is only one of the land use and environmental problems facing the coastal zone. It cannot be considered in isolation from other problems, although, in the Commission's view, some short term action should be taken in relation to this specific issue. *Longer term efforts must be aimed at achieving an orderly growth process for all development within the zone.* As recommended by the Royal Commission on Land Ownership and Land Use as long ago as 1972, there is a continuing need for a coastal zone land use plan that would provide for orderly growth in what is the most scenic and most fragile landscape zone in the province.
>
> Since 1972 very little progress has been made in land use planning at the provincial level. Most of the coastal zone remains outside the boundaries of municipalities with Official Plans and zoning bylaws. The result has been unplanned development which in its most extreme form is exemplified by a "Coney Island" type of commercial strip that has sprung up along the southern border of the National Park at Cavendish. [Emphasis added.]

The Use of Land: A Citizens' Policy Guide to Urban Growth; A Task Force Report Sponsored by the Rockerfeller Brothers Fund contained a chapter entitled "Subdividing the Great Outdoors". Although prepared as long ago as 1973 the text contained a number of themes that strike a familiar resoundment in the context of cottage subdivisions in Prince Edward Island. Consider, for example, these exerpts from pp. 263-270:

> From Martha's Vineyard to Hawaii, from Colorado to Florida, rural land is being subdivided and sold at an unprecedented rate. There is scarcely a state where subdividers are not turning farms or forests (or deserts or swamps) into lots, streams into lakes, and the hopes of the average man for investment or leisure property into sales and profits. . . . In just one Pennsylvania county (population: under 15,000), subdividers mapped 25,000 lots and sold off 12,000 of them in just five years. Rural lot sales in Arizona have totaled 1 million acres, experts estimate.
>
> Concern about subdivision of beachfront and countryside on Martha's Vineyard, off the coast of Massachusetts, has led to the introduction of strong protective legislation in the U.S. Senate. In Vermont and Florida, adverse publicity given to the recreational land subdividers helped pass environmentally-oriented state land use lands. In Pennsylvania, California and Arizona, major scandals involving alleged victimization of lot purchasers have been front page news.
>
> ....
>
> *In the absence of specific problems, such as consumer victimization or environmental damage, there is nothing wrong with second homes. They can bring much enjoyment and be sound investments.* Resort homes are becoming more common in many counties - in Sweden, for example, where 50 percent of the households own second homes (compared with 5 percent of U.S. households in 1970.)
>
> *Most purchasers of recreational lots, though are buying but not building.* For the nation as a whole, at least six recreational lots were sold in 1971 for each second home constructed (in fact, the ratio is probably higher because many second homes are built on country property and farms that have not been subdivided). . . .

Why is there such interest in buying undeveloped rural lots? Surveys in two California counties and in Pennsylvania suggest the reason: *About 70 percent of the prospective customers reported that they were primarily interested in the land for investment rather than for enjoyment.*

Advertising by many lot sellers encourages dreams of profit. A sales representative of a large Florida subidvision, visting the task force offices, talked of "smart people" who were getting in "on the ground floor" by buying land that could not be developed for ten years but could be "traded up" at big profits later. Time was said to be "running out" on the opportunity to buy the kind of land the representative was offering. Although the subdivision was touted as a "new community", careful inspection of plans and federal and state disclosure reports revealed that a great many of the lots for sale were not accessible by roads and that the lands designated on plans for schools, hospitals, libraries, and shops were nothing more than white spaces on a map.

Such aggressive sales practices are common in the lot sales industry. . . .

The agressive sales pitch is more often than not accompanied by vague and misleading replies to specific questions. "We don't know exactly when the improvements will be completed". "We have no reason to believe that septic tanks will not be adequate . . . It would be unconstitutional for a government not to permit them". . . . *I'm not sure exactly what it would cost to get electricity and telephone now but, of course, the cost will go down when more residences are built.* . . .

How much does the consumer-purchaser stand to gain when he buys a lot? Will he, as he perhaps imagines, be participating in a great land boom? The answer is probably no, for lots are plentiful, the buyer normally pays an already inflated price that is several times the price of raw land; and the big subdividers have the resources and sales experience to reach potential buyers far more effectively than an individual with a lot or two. The risk of future regulations - a prohibition on the construction of septic tanks due to groundwater pollution, or a building moratorium due to sewage treatment plant overload - can impede resale and add still further to the investment hazards. . . .

What, then, of the buyer who wants to use his lot for a second home? A little checking shows that if he wants to build right away he may face unanticipated expenses. Task force staff members inquired about properties from one recreational lot seller . . .

To determine the cost of building right away, we investigated the cost of utilities for "our" lot. According to the local telephone company, a telephone could be installed on a lot close to the old ranch house for about $130. When we described our lot, the installation man laughed, "I doubt you'll want a telephone. It'll cost you about $400 a mile from the reservoir, and the lot you're talking about is 5 miles away." According to the local power company, our lot was only a mile and a half from the power line - a better situation than with the telephone company - but the cost of installation was $5,000 a mile. The power salesman recommended the use of a gasoline powered generator, which would cost from $900 to $1,300. For water, a lot owner must drill his own well. . . . [D]rilling would cost from $6 to $8 per foot for a well 100-250 feet deep and an average septic tank system would cost about $800.

> (To a staff member's inquiry about the value of the lot, a local real estate agent spoke of finding comparable 5-acre lots for between $1,900 and $3,000. But, he suggested, a person with a little capital could purchase a larger piece of land, say 150 acres, subdivide it into lots, and sell it off himself. The agent knew of some good land for a "little less than a hundred an acre" and said he could arrange everything with the county.)
>
> The way in which many rural lot subdivisions are created leads to two basic concerns. Consumer fraud is one. Damage to both the environment and to opportunities for quality development is the other. [Emphasis added.]

We have reason to view, with some alarm, the potential for and/or existence of what certainly amounts to sharp practice and may constitute consumer fraud in the seasonal residency marketplace.

The issue has been brought to our attention from a variety of sources. A senior practitioner in the legal profession, for example, wrote as follows:

> Early publicity and comments in the Press at the time of the establishmsent of your Commisison seemed to indicate that foreign developers were the culprits and needed to be regulated. It is my experience that the less desirable developments on Prince Edward Island have been done by Islanders and continues to be done by Islanders. There are even cases of deception and fraud being perpetrated on naive non-residents who purchase sight unseen. That will probably always happen but *all* development should be scrutinized very closely, especially mega developments such as proposed at St. Peters.
>
> Considering development, developers should be required to spell out specifically what services they are providing and should be able to demonstrate to the authorities that the land is not so fragile that it is likely to have future problem with water and/or septic. [Emphasis original.]

We have viewed signs advertising cottage lots as "government approved" and as "serviced" lots. To the unwary, a "government approved" lot implies that the property can be used for building purposes, whereas the purchaser may find the lot unsuitable for septic tank installation and well-drilling without salt water intrusion may be difficult and very costly. A "serviced" lot implies the property is provided with off-site sewer and/or water utilities. Again, it is "Buyer Beware" - a "serviced lot" is one where electricity or telephone is available, at least from the highway!

A typical sales gimmick, practiced on non-resident purchasers who are not familiar with Island land markets, is to escort the customer so there is no opportunity for the buyer to see comparable properties and other prices.

Out-of-province purchasers are shown properties when snow hides rocky beaches and when insects, that destroy the utility of the property for recreational purposes, are not present.

In one scenario that resembled the type of complaint being made by the U.S. Task Force, an out-of-province purchaser acquired a property at a price well in excess of local market conditions. He inquired about electricity before the deal was closed and the answer was to the effect that getting the power down from the road would be no problem and, once all lots were sold, the homeowners' association would split the cost. The purchaser soon learned to his chagrin that others had no plans for immediate construction of residences, so if he wanted electricity, he would have to pay the entire cost of the utility. As a result, he bought a generator.

Mandatory development agreements that are strictly enforced would alleviate many of these complaints. In our opinion, the laxity in the application of regulatory controls is a passive contributor to what, in its best light, might be described as shoddy standards and/or sleazy practices that ensnare gullible buyers.

Of particular concern to us - from both the perspectives of consumer and environmental protection - is the approval for cottage lot subdivisions of sites that are entirely inappropriate for any form of building development. Property has been subdivided, power poles have been installed and, in some instances, cottages have been built in what we regarded as swamp and marshland. Large-scale developments, including those that are expanding incrementally, threaten fragile sand dunes and other natural features.

The issue of environment protection and quality development was considered by the American Task Force report (*The Use of Land: A Citizens' Policy Guide to Urban Growth)* and these passages, from pages 275 ff. provide a useful framework to define the issues:

> Although consumer fraud is the most widely publicized misfortune resulting from today's lot sales practices, damage to the environment and to opportunities for quality development deserve at least equal attention. *For what most recreational lot sellers are doing is extending,* to thousand of square miles of rural open spaces, *the unfortunate development method* that creates "lots first, buildings later". The defects of that method - the common over-emphasis on land as a speculative commodity, the lack of concern with land as resource and as site for quality development *have become increasingly clear as first-time home developers abandon the approach in favour of more imaginative methods. Yet the hard-learned lesson is not being applied to the countryside.* [Emphasis added.]
>
> *If past experience is any guide, many of the lots now being created will never be used at all; in this case, it is, "lots first, buildings never". The lot lines will remain on the record books, though, and land titles will become ever more clouded as decades pass.* Tough for the land buyers? Yes. Tough also for the environment, as it shown by any number of "dead subdivisions" created forty or fifty years ago. If a few scattered lots are built upon, the subdivision may become a sparsely settled rural slum served by neglected roads and lacking essential services. Since the *undeveloped lots are too small for agricultural or other non-urban use, no one bothers to manage or care for the land. The subdivision has transformed open space into idle vacant lots no one cares about.* [Emphasis added.]
>
> What if the subdivided land, perhaps years later, becomes suitable for urban development? With the land divided into small pieces, with title clouded and prices driven up, there is *little likelihood of re-assembly of the more imaginative planning*

and development now possible. Once the countryside has been given over to quarter-acre or 1-acre lots (and most recreational lots sold in 1971 were one-quarter to 1 acre in size) you can *forget thoughts of clustering, variable densities, common open spaces, and the like. Even if the buyers' dreams of riches have faded away, the lot lines will survive to block sensitive use of the land.* [Emphasis added.]

Where lots are built upon, a different set of environmental problems arises. Imagine an area of "unsurpassed scenic beauties" (as one promotional brochure put it), with rolling hills and falling streams, outcroppings of rock, thick stands of wood land, and perhaps a lake. A careful survey of the area would suggest what ought to be preserved and what intensity of development could be tolerated without doing violence to the environment. Often, *a careful land capacity inventory will reveal that considerable development is possible in some areas; little or none, in others.* [Emphasis added.]

Yet *lot sellers* have little incentive to plan in this sensitive way. Like their predecessors in earlier decades, they *typically pay little attention to the conformity of lots to the realities of topography and the hydrologic cycle. Many also try to avoid the costs of needed water supply and waste disposal facilities. The results can be disasterous.* [Emphasis added.]

In the Pennsylvania county in which 12,000 lots were sold in five years, soils in about half the area are unsuitable for on-site sewage disposal systems. Some water supplies are already contaminated. Nevertheless, 89 percent of the recreational lot sellers in the vicinity indicated in a survey that they provided no sewers (and 52 percent, no water). Only the low level of building activity prevents severe ecological damage from occurring.

Over two-thirds of recreational subdivisions are sited near water, often on artificially constructed lakes. While covenants on lots are often designed to protect the view of the water, the lakes and streams themselves are often neglected. *Poorly planned roads, clearing of ground cover, high-density settlement - all can cause erosion and resultant sedimentation of water bodies.* Once a natural drainage system is altered, rains and sudden melts may send water and soil cascading down uncovered hillsides. [Emphasis added.]

In some recreational land areas, the heavy fertilizers used to keep golf courses and lawns healthy find their way into adjoining lakes. So do laundry and dishwasher detergents, oil products from cars, salts from winter snow removal operations, and the fertilizers, weed killers, and insecticides used by homeowning gardeners. The result may be a lake that is unfit for swimming in as few as five years, a putrid nuisance in ten. . . . [Emphasis added.]

What steps should be taken to reduce damage such as this? The first step has already been recommended: *end the high-pressure salesmanship that concentrates* the attention of lot buyers on speculative profit rather than on quality and livability. *When the consumer thinks of his lot only as something to resell at a profit, he is less likely to ask the difficult questions that he would ask if he were thinking of the lot as a place for the family to spend weekends or vacations. Nowhere is the gap between profitability and liveability clearer, or its consequences more damaging, than in recreational subdivisions.* [Emphasis added.]

The second step is to *base public policy on the recognition that second homes form communities.* However much we may like to dream of recreation homes as isolated refuges in the wilderness, they are rarely isolated. *Most sales projects would, if fully developed, establish suburban densities. At all but the very lowest densities, these developments require most of the facilities and services - roads, sewers, trash removal, fire and police protection - needed in urban areas.* [Emphasis added.]

With the demand for second homes growing, then, it is essential that public policy foster the creation of recreation communities that are livable, enjoyable, and ecologically sound. Such communities can best be created by the same methods that should be used to create any other kind of community, methods based on sound planning, with development kept out of areas for which it is unsuited, with developers responsible for the full range of needed facilities and services, and with incentives for quality built into the development process.

Recreational home developments should be required to satisfy the same environmental and land-use policy standards that ought to apply to first-home developments. [Emphasis original.] Compromise with quality standards should not be permitted simply because a project is labelled as one for second homes or for recreational use. Indeed, *some excuses for compromise that may exist for first home projects, on grounds of cost for low-income families, for example, do not apply to second homes.* [Emphasis added.]

Experience over the decades demonstrates the problems that can arise when standards are lowered or waived on grounds that later prove spurious. ("No one is going to live in these houses in the winter, of course") Increased leisure time and the four-day week are already leading to the "winterization" of thousands of seasonal homes. The only safe course is to take subdividers at their word; when a subdivision plat shows thousands of lots, occupancy of which would urbanize a remote area, then *the development must be seen as setting forth the physical organization of a future urban community. Adequate planning and facilities for such a community should be required by law.* [Emphasis added.]

Local governments should establish subdivision requirements sufficient to assure that all subdivisions, whether for first or second homes, will attain acceptable development standards and provide adequate public facilities, including water supply and sewage disposal facilities (installed or bonded), as a condition of subdivision approval. If bonded, sufficient sums should be addded to the estimated cost to account for continuing inflation. . . . [Emphasis original.]

For recreation development, as for any other development, the base of protective regulations should be established by local governments. Yet, because large-scale development is new, local residents and officials of rural localities often lack experience in responding to it. They are likely to recognize that new development means income, in purchases at local stores, in construction by local contractors, in mortgages by local banks and services by local lawyers and surveyors. But *they may be oblivious to the later costs that experienced localities know about the dollar costs of providing roads and sewers and other services for scattered projects, the personal costs of congestion and changed lifestyles and disruption of cherished countryside, and the social costs of a new urban and affluent population settling among small town people and farmers.* [Emphasis added.]

> *The process of subdivision occurs at such an extraordinary rate that often the damage is done before local officials wake up to the problem.* [Emphasis added.]
>
> Small jurisdictions may also lack the resources to deal with huge new projects. Within New York's vast Adirondack Park, there are eighty-seven towns, only seventeen of which have populations greater than 2,500. Because these towns have limited financial resources and until recently, no significant development pressures, less than 10 percent of their land has even been zoned. One firm owns 18,500 acres of land in the Adirondacks in Altamount Township (population: 6,500). The subdivider has indicated his intention to sell from 4,000 to 7,000 lots in the township, accommodating a potential seasonal population of 15,000 to 25,000 people. Throughout the sparsely populated Adirondacks, an estimated sixty developments are planned or in operation.
>
> In one rural Florida county (population: 4,500), a major corporation is developing a "new community" for 750,000 people.
>
> ……
>
> A miscalcuation can be devasting. If people do show up, the locality will face demands for fire, police and garbage collection services, for street and utility maintenance, and the like. Officials of one California county were stunned by the estimated $2 million needed for repairs to faulty roads, drainage systems and utilities installed by the developers of a recreational subdivision.
>
> ……
>
> Because rural localities do face so many obstacles in guiding a rush of development, we believe it essential that the states play an active role in guiding recreation development. Although strong local controls and standards applicable to lot subdivision are essential, states should establish their own regulations to assure that planning expertise is applied, that adequate facilities are required, and that inappropriate subdivision is prohibited, even in remote areas.
>
> A number of states have already acted. Pennsylvania, for example, has banned septic tank construction for new recreation subdivisions until counties develop a comprehensive plan for sewer and water systems and each township and borough within a county completes a feasibility study of the suitability of septic systems for their areas. New regulations in Connecticut make septic tanks costly (and sometimes impossible) to install.
>
> Vermont, Maine and Florida have statewide controls on large-scale development, controls that reach many rural subdivisions. *Vermont requires a state permit for any project involving ten or more acres or ten or more units. State permits are granted only after an applicant establishes that a project will not cause "unreasonable" harm to the environment or place an "unreasonable" burden on local governmental services.* [Emphasis added.]

Are the issues presented by this Task Force in the U.S. nearly two decades ago relevant in the Prince Edward Island context? We believe them to be. The numbers may be fractionalized to be meaningful to this province but that in no way detracts from the essential validity of what is at stake.

The message from the Task Force is clear: unfettered subdivision of land without the imposition of quality and/or quantity controls represents a no-win situation for the public. If lots remain unsold or undeveloped, the utility of the land base for other forms of development or use is seriously eroded, perhaps lost entirely. In addition to that dimension, we see evidence *now* of how the landscape deteriorates when lots are unsold or undeveloped. Mazes of power lines and poles present a tangled network of lines that mar the previously unspoilt beauty of many Island coastal points. Elsewhere, the utilities mingle with two or three cottages, each one oddly situated in reflection, no doubt, of the unfulfilled "grand design" that will become obvious when all lots have been developed.

And it is the latter scenario that represents the other side of the equation. What are the consequences when, and if, the subdivision does develop to its capacity? Long gone is the seller and his profits. Who will be called upon when wells are polluted? When pavement for the road becomes a "must"? Will tourists be attracted to tour a landscape littered by poor quality cottage colonies?

We have been urged to recommend stronger controls to ensure recreational homes are not used as permanent homes. Concern is now being expressed that summer cottages will become retirement homes and that recreational properties will be converted into permanent homes. The cost to the public purse will mean additional expenses for snow plowing, school busing and a host of other services.

We are of the view that the time for that type of control has *passed.* Already residences in cottage subdivisions are being used, both for winter recreation and for year-round living. The time for instituting such controls was *prior* to the granting of subdivision approval. The only measure of realistic control that we can recommend now is greater prudence before approving future cottage subdivisions.

It is of particular concern that approval has been given to cottage subdivisions in comparatively isolated locales which will enhance public costs if they are developed.

The passage we cited from the Report of the American Task Force touched on another issue in relation to cottage subdivisions that we are of the view should be of concern to the province - that is the practice of creating cottage subdivisions supposedly catering to non-resident "upscale", monied clientele.

In several presentations made to us, local residents have complained that the initiation of these types of projects has created considerable discord in their localities. (This, it would appear is a universal problem. When we met with the Selectmen of Hartford, Maine [population c. 500], we were told that a development proposal for a 62-lot subdivision with frontage on a local lake led to such dissention within the community and within families that one member of the municipal council felt compelled to resign to preserve domestic tranquility!).

The Task Force, which we cited earlier, referred to the more long-term problem - the socio-economic consequences of having a new community with a totally different lifestyle and financial outlook develop in the midst of a traditional, rural community largely composed of citizens of limited means. It is our contention that this scenario is far different from the type of cottage colony created by a mixture of local residents and non-residents representing a variety of lifestyles and pocketbooks. Experiences elsewhere have indicated that once a very "upscale" population forms the majority base in a recreational community, the expectations for services and amenities rise and so do local taxes - to the point where older residents can no longer "afford" to live there anymore and young people in the area are equally shut out. How "compatible" will a community of 50 or 100 non-resident families living in summer cottages far more luxurious than many Island homes be in relation to a neighbouring community where housing standards are low, unemployment is high and expectations for a better lifestyle are not being fulfilled? It is, of course, easy to say that Islanders, being a friendly and hospitable citizenry, would welcome the newcomers and adjust very nicely. But, is this the reality? Or would we be introducing the kinds of resentments that lead to security guards, high fences and other devices to "ensure privacy" which characterize such enclaves elsewhere?

In a province where tourism is now ranked as the second most important industry, it is surprising that the relationship between tourism and seasonal dwellings, particularly those owned by non-residents, has not been explored in almost two decades.

A "Vacation Residence Survey" was completed in 1972 by the P.E.I. Department of Environment and Tourism. It was based on a survey of some 154 customers of Maritime Electric with out-of-province mailing addresses. (In yet another of the many examples we came across to indicate the "absenteeism" of many non-residents, a total of 263 potential respondents were identified but the researchers found the balance could not be located "even after three or four visits to their vacation home".)

The survey showed the respondents averaged 8.29 weeks at their vacation residence. Asked about visitors other than members of the "cottage" households, the replies ranged from zero to eighty with an average of slightly more than 7 visitors. Visitors stayed anywhere up to 90 days but, on average, stayed 11.56 days. More than two-thirds of the respondents (113) hosted visitors and they accounted for 9657 visitor days (an average of 85.46 visitor days). Asked if any friends and/or relatives spent their annual vacation at the vacation home during the summer season, 75.9% said yes.

The survey also examined spending patterns and found 23% of the respondents said they did not obtain essential goods and services locally in the vacation area. Almost 17% did not buy materials locally when their vacation home was built. The average annual expenditure on cottage maintenance was $430.07 an average inflated considerably by not adjusting the data to take into account one respondent who claimed a maintenance expenditure almost 20 times the average. Examination of the data indicated more than 30% of respondents spent $100 or less on maintenance. Almost two-thirds of the respondents (66.89%) claimed they did their own maintenance on their vacation home Family expenses while at the vacation home ranged from $60 to $8,000 and averaged $904.06.

The "1988 Tourist Exit Indicator Survey", prepared by the P.E.I. Department of Tourism and Parks and the Department of Regional Industrial Expansion, provided some current data. It found some 4,736 tourist parties (or 11,348 persons) surveyed indicated their accommodation was "vacation home owned/borrowed". This represented 2% of all tourist parties and 2.2% of visitors included in the survey. Visitors in this category represented 10.8% of all party nights and they had an average length of stay on the Island of 23.2411 days. This data must be considered with caution, however, for another category identified 26.5% of all tourist parties staying with "friends/relatives". Any respondent who was staying at a cottage with friends or relatives might conceivably place themselves in either category. The data indicated that those whose accommodation was "vacation home (owned/borrowed)" expended a total of $3,937,249: this meant an average per tourist party of $875.54. Considering the average length of stay was 23.2411 days, the data would seem to indicate an expenditure of $37.67 per party per day (or $15.72 per person per day). This average is lower than the average expenditure per party per day (and per person per day) presented in the data when visitors are categorized by origin and by purpose of the trip, with the exception of persons whose purpose was said to be passing through to the Magdalen Islands. While the data must be regarded with caution, for the reason we gave earlier, it does raise a number of questions.

Let us pose a few provocative ones. What do seasonal residents add to the local economy? Are the economic benefits derived from non-residents who own cottages outweighed by the competition they present to local businesses who provide cottage rentals to visitors? Does the local economy - already in its peak demand for labour and infrastructure requirements in the agricultural, fisheries and tourism sectors - suffer or benefit from demands placed upon it by seasonal residents? What is the impact of creating numerous summer colonies of non-residents who have seasonal residences? What does it cost the province to provide recreational opportunities of this type?

Will the summer cottages of today be the retirement homes of tomorrow and, if so, what is the projected cost to the public purse? At first glance, it can be said that visitors who own or borrow vacation homes contribute almost $4 million to the provincial economy (in 1987 figures). However, in our view, until the province knows what costs are associated with the generation of this revenue, it cannot be in an effective position to develop sound land use planning policies with respect to the future encouragement or discouragement of summer cottage subdivisions.

We note that there is no provision for sunset clauses with respect to subdivisions. While this deficiency is of concern with respect to all subdivisions, it is particularly so in respect to summer cottage subdivisions in view of the large number of lots for which no building permits have been issued. There are cottage subdivisions where no lots have been sold and the poor design of the subdivision suggests that future sale prospects would be dim. Others were approved for standards no longer relevant to the present day. Remedial measures are needed both to ensure that future approvals may be negated if the lots remain unsold and to institute a program that would eradicate lot lines that have no prospect of re-sale in their present form.

We understand present practices allow a property to be subdivided and then "flipped" in its entirety. This practice apparently is being used by those subdividers who wish to disguise their identity; typically, this is done by a purchaser who enters into an agreement of purchase and sale on condition that the seller is able to obtain an approval for the subdivision. That this practice is being carried on may be a reflection on the discretionary treatment the public perceives to be a hallmark of the enforcement of regulatory measures. Equally it may be a reflection on the poor track record of some well-seasoned land subdividers in fulfilling commitments attendant to the approvals. Remedial measures in this regard should be examined.

In view of these concerns, we would recommend

- **THAT the province study the economic impact of recreational residences in relation to the tourism industry and the public costs associated with this form of housing.**
- **THAT, pending the results of such a study, the province approve no major summer cottage subdivisions unless the development is accompanied by an agreement that calls for quality development, including the installation of centralized sewer and water services, underground utilities, cables for telephone and electricity, design standards for housing, quality roads, and adequate security for performance.**
- **THAT the province review all summer cottage subdivisions and institute a program of sunset provisions that would cause approvals on unmarketed subdivisions to lapse after a reasonable period of time.**

Chapter 12

NON-RESIDENT OWNERSHIP

The quantity of land owned by non-residents and measures to control the rate at which non-residents acquire Island property holdings has been a thorny subject of concern for many years. As we indicated earlier, legislation concerning land ownership by aliens has existed in Prince Edward Island since 1859. By 1964, an amendment to *The Real Property Act* reduced the acreage that could be acquired by non-Canadians, without consent of the Lieutenant-Governor-in-Council, to 10 acres, and, for the first time, a limit on shore frontage was introduced. A maximum of five chains (330 feet) could be acquired by non-Canadians without consent. The legislation was not administered or enforced and only rarely were cases ever channelled through the provincial Cabinet. In a small province with a land-based economy, where almost all land is privately owned, trends indicating the disappearance of large quantities of land into the hands of a non-resident population were alarming.

The dimensions of the problem and the seriousness of the situation were realized only in the late 1960's and early 1970's. *A province-wide property mapping program and socio-economic survey carried out between 1968 and 1970 by the Economic Improvement Corporation and the Department of Energy, Mines and Resources, combined with the introduction of a modern system of land survey, large scale mapping, land valuation and land parcel registration, provided for the first time information on the extent and implications of the non-resident land ownership problem.*

During the preceding decade in particular, Prince Edward Island had come suddenly within the recreational land market of central and eastern Canada and the northeastern United States as improved transportation placed the Island within a two days' drive of New York and Toronto, while air service connected Charlottetown to such large centres as Montreal, Ottawa, Toronto, Boston and New York. Attractive rural landscapes in Central Canada and along the eastern seaboard of the United States had already been heavily taken up by urban commuters and recreationalists and land values in the province were much lower than elsewhere. Non-residents were acquiring land, some of which was among the best of high quality recreation land and productive farmland in the province. The agricultural industry, already experiencing a rapid decline in the number of farms and farming population, was under new pressure to improve production and expand acreage. The large acreages acquired by non-residents were often lost to productive use, and this, combined with increasing land values brought on by the demand, made farm consolidation more difficult for some Island farmers interested in expansion. The problem was perhaps most visible along the coast, where local residents began to discover they were competing for less shoreline property at soaring prices. Stretches of the scenic shoreline were destined for subdivision and resale as high-priced cottage lots. Public access to beaches was being threatened by fences and No Trespassing signs in areas where Islanders considered access a traditional right. The province saw lands going into non-resident ownership which might have been suitable as provincial park land or conservation areas. Of growing concern, too, was the potential impact of both resident and non-resident speculative purchasers of land on a large scale.

In 1971, the Committee on Land Acquisition and Land Transfer to Non-Resident Corporations and Private Individuals, a Special Legislative Committee, examined this issue. (Appendix F of Volume II contains its report.)

Research for this Committee was based on a 10% sample of out-of-province people receiving school tax bills from Queens and Kings counties. The results suggested that as of mid-December 1970, approximately 67,690 acres (4.84% of the province) comprised privately-owned properties over five acres in size held by non-residents. Of this acreage, 55.8% was owned by Canadians residing in other provinces, 44.1% was owned by Americans and .1% by residents of other countries. Non-resident company holdings were estimated to comprise 3,300 acres, raising the total acreage to almost 71,000, or 5.07% of the land base. The area of properties less than 5 acres in size amounted to 885 acres. Accordingly, the Committee concluded that as of mid-December, 1970 approximately 72,000 acres or 5.13% of the province was owned by non-residents, with approximately half the owners having properties under five acres in size. Of those under five acres about two-thirds of the properties were under 1 acre in size.

Especially alarming was the rapid rate of increase: some 22,000 acres every five years - as suggested by the data compiled in Table 1 from the Committee's report:

TABLE 1

THE REAL PROPERTY ACT
Approvals for Purchase by Aliens
Summary - Period 1964-1970 Incl.

Year	No. of Approvals	Total Acreage	Average Acre. Per Approval
1964	4	324	81
1965	10	682	68
1966	21	1617	77
1967	13	906	69
1968	19	1223	64
1969	42	2359	56
1970	51	3689 plus approx. 15 lots	72
	160	10,800	69.5

Even under a partial containment policy as much as 204,000 acres or 14.5% of the province's land base might be in non-resident hands only 30 years later, by the year 2,000. In the absence of controls, the amount would likely be much more. Clearly, *if agricultural land continued to be taken out of agriculture until the end of the century and reverted to idle land for summer recreational use, its full potential would not be realized and the provincial economy would suffer accordingly.* As well, the provincial government was sensitive to the need to preserve prime Island beaches and shoreline for public use and enjoyment; the same areas were of most interest to speculators.

While these concerns were evident, the Committeee was reluctant to restrain the rights of the seller by any intervention in the marketplace.

This Committee made a number of recommendations, including provisions to require *non-resident* owners and corporations to disclose their land holdings in the province, the regulation of *land use* by *foreign* owners as a means of discouraging speculation on land, a possible Land Acquisition Act to regulate the *purchase* of land by non-residents, regulations to ensure lands flowing through the L.D.C. land bank were used for agricultural purposes by *bona fide* resident farmers, and provisions requiring that those land transactions needing consent by the Lieutenant-Governor-in-Council be advertised in the local press "so that residents may be aware of land being sold".

None of the committee's recommendations were adopted, except insofar as the regulation of purchases of land by non-residents was initiated by broadening the scope of the controls to include not just "aliens" but all "non-residents" wishing to acquire more than ten acres of land or five chains of shore frontage. This amendment to the *Real Property Act*, combined with a serious approach to the administration of the legislation, provided a tool or mechanism for closely monitoring developments, as well as enabling the province to control undesirable developments. No doubt it was seen as a deterrent that would help to stem the tide which had been shifting the province's valuable land resources to non-resident ownership and would serve, perhaps, as a holding action to allow time for arriving at more satisfactory long-range solutions. But the whole issue of land ownership by non-residents was by no means settled and, indeed, was a key factor in the establishment of the 1973 Royal Commission on Land Ownership and Land Use.

When it reported, the accelerated growth of non-resident ownership was obvious. At a minimum, some 17,000 acres had come into the hands of non-residents in the space of 26 months. The Royal Commission found, at pp. 29-34:

> *As of March 2, 1973, landholdings belonging to individuals non-resident to Prince Edward Island amounted to at least 89,000 acres, or 6.3% of total land area, and included at least 100 miles or a minimum of 11.5% of total shore frontage.* This does not include lands acquired by non-residents whose deeds have not yet been registered, nor does it include land held by corporations whose head office is in Prince Edward Island. If these exceptions were included, the total would reach considerably more than 100,000 acres.
>
> Half of the non-residents hold plots of less than five acres, primarily cottage lots, which together account for less than 2% of total non-resident acreage; hence the concern for larger holdings as reflected in the recent legislation and as borne out in the 1972 requests for larger purchases. *The fact that only 10,920 acres were approved for purchase out of the 17,325 acres applied for, indicates that the legislation has indeed had a 'cooling' effect.* The case with respect to shoreline has been somewhat similar. *Nonetheless, a continuation of the 1972 rate of purchase under present restrictions would place more than 25% of the Island in non-resident hands by the year 2000.*
>
> *Location -*
>
> Non-resident land purchases are Island-wide in their distribution.

> Of the 1,141 linear miles of Island shore frontage washed by tidal waters, more than 100 miles, or almost 10% of the total belongs to non-residents; 16 miles approved for purchase in 1972 alone. Coastal purchases, which include most holdings of less than 10 acres, have shown a marked preference for Class 1, 2 and 3 shorelines fronting the best sand beaches on the Island, the same beaches which will be increasingly required for public use.
>
> The larger purchases show less preference for the coast, and tend to be located in areas where soils are marginal to agriculture, and where land values are low. Nonetheless, larger holdings include at least 17,500 acres of cleared Class 2 land, some of the best farmland on the Island.
>
> *Impact* -
>
> The impact of coastal purchases has reflected itself in major land value increases . . . which make it increasingly difficult for either the Province or individual Islanders to invest in shoreline recreational property. Of more concern, has been the erection by non-residents of fences and No-Trespassing signs preventing access to the shores in places where local Islanders have considered it traditional.

The legislation, as amended in 1972, was tested in the Supreme Court of Canada, by two Americans from New York State who had sought to purchase approximately 30 acres of land. The Attorney General of Canada supported the appellants while the other nine provinces provided briefs in support of the Island's position. The decision of the Supreme Court upheld the validity of the legislation. The court found that absentee ownership of land was a matter of legitimate provincial concern and that it was entirely within provincial jurisdiction to pass laws dealing with land. Furthermore, it was found that the case represented not an attempt to regulate or control alien residents *per se* but rather a limitation on land holdings by non-residents. *The right of provinces to pass legislation in respect of non-resident land ownership was upheld unanimously: Morgan and Jacobson v. The Attorney General for Prince Edward Island,* (1975), 55 D.L.R. (3d) 527 (S.C.C.); which upheld (1974), 42 D.L.R. (3d) 603, (1974), 5 Nfld. & P.E.I.R. 129 (P.E.I.S.C.).

It is important to note that the legislation did not prevent non-residents from owning land in Prince Edward Island, nor did it restrict the total amount to no more than 10 acres or less than 330 feet of shoreline; it qualified that non-residents must receive the approval of the Lieutenant-Governor-in-Council to acquire property in excess of these measuresments. The legislation was regulatory, not prohibitory. In reality, because of government policies, approval was granted in the majority of cases, but these facts were not well known at the time. Throughout Canada and the United States, and even in Prince Edward Island, misunderstanding of the legislation was widespread, largely because of incomplete or erroneous coverage by news media. Much publicity attended the Supreme Court decision of 1975, and a typical news report stated: 'A Prince Edward Island law forbidding non-residents from owning any more than 10 acres of land on the Island was upheld in a unanimous decision of the Supreme Court of Canada'. Such news items were misleading since they failed to mention that larger transactions were permissible on condition of approval. This misconception may have discouraged prospective non-resident buyers from entering the marketplace and, like the legislation itself, acted as a deterrent.

The Prince Edward Island situation caused other jurisdictions to examine more closely their land ownership patterns and their land use policies, and many were alarmed at the findings. A high profile issue, it generated considerable discussion, as suggested by the *Canadian Geographical Journal* articles entitled "Shall Canada's Land go to the Richest Bidders?" (July/August, 1975) and "Are We Alienating Too Much Recreational Land and Too Much of our Best Agricultural Land?" (May, 1976).

Until 1974, provisions of the *Real Property Act* covered transactions involving all non-residents, whether they were individuals or corporate entities. But difficulties were experienced in differentiating between resident and non-resident corporations and there was concern about large-scale land purchases by companies seeking to vertically integrate their operations. It was considered prudent to follow developments more carefully. Consequently, in 1974, *The Real Property Act* was amended, requiring that all corporations, whether resident or non-resident, submit applications for approval by the Lieutenant-Governor-in-Council for the acquisition of any property the aggregate total of which exceeded 10 acres or more than five chains of shore frontage. Another amendment, in December 1975, exempted from the legislation all non-resident properties involved in wills or bequests, if the deceased was a resident of the province at time of death, and if the beneficiaries were the spouse or children of the deceased. Before it became law, it had been government policy to approve such cases.

Further examination on non-resident land ownership was provided by later studies. "Non-Resident Land Ownership Legislation and Administration in Prince Edward Island", a report prepared jointly by the P.E.I. Land Use Service Centre and the Maritime Resource Management Service, Council of Maritime Premiers, for the Lands Directorate of Environment Canada, in March 1978 showed the relentless trend towards non-resident acquisition of land in the province. Data in that report indicates that by July of 1975, non-resident land holdings had risen to 108,633 acres or 7.76% of the province's area. The report indicated also that "in 1975, land held by Americans and Canadians of other provinces represented respectively 41.9% and 57.6% of the total non-resident owned acreage. Residents of Ontario and Massachusetts held noticeably large acreages."

This report also outlined the administrative procedures and policies of the day, as explained in this passage at pp. 9-11:

> The responsibility for administering Section 3 and Section 4 of *The Real Property Act* technically rests with the P.E.I. Land Use Commission, . . .
>
> The Commission, however, may call upon any department for assistance, or may delegate its duties and powers, . . .
>
> Authority for the administration of provisions respecting non-resident land acquisition in the province has been delegated to the P.E.I. Land Use Service Centre. It processes applications or petitions for land acquisition by non-resident individuals and corporations for properties the aggregate total of which exceeds 10 acres or 330 feet of shore frontage, and makes recommendations directly, on behalf of the Land Use Commission, to the Lieutenant-Governor-in-Council concerning approval or denial.

Applications involving private landholdings, channelled through the Land Use Service Centre, are accompanied by a legal description of the property and a map, air photo or orthophoto showing the location. Petitions also provide information on the vendors and their residency, the purchasers and their citizenship and residency, acreage of the property and other parcels owned, shore frontage, sales price, nature of the transaction, and intended use (eg. permanent residence, summer or seasonal residence, farming, subdivision, tourist development). Location and ownership information is verified, and the case is further evaluated on the basis of land capability and in light of government programs relating to agriculture, forestry, environment and tourism.

Certain guidelines have been provided by Cabinet as a basis for evaluating cases and for recommending and deciding upon approval or rejection.

1. All land transfers by will or other testamentary dispostion automatically received approval (now covered by legislation).

2. If the property involved by will or other testamentary disposition is desirable for agriculture, recreation, forestry or other government program purposes, beneficiaries may be approached in the hope of acquiring the land.

3. Transactions involving the federal Crown corporations, such as the Farm Credit Corporation and the Department of Veteran's Affairs, automatically receive approval.

4. Non-residents with the stated intent of locating permanently in the province and of engaging in farming or other useful resource development or commercial activity receive favourable consideration.

5. Petitions are normally denied only when the Land Development Corporation can offer a similar price to acquire the property for the province.

6. Petitions involving stated or apparent speculation are rejected.

7. Where petitions involve properties highly desirable for recreation, agriculture, forestry or other reasons, special consideration is given to the possibility of acquiring these properties in the interests of the province through the Land Development Corporation.

Recommendations of the Land Use Service Centre regarding the approval or denial of petitions are based upon these directives.

Where case recommendations are not immediately evident, several procedures are followed. Various government departments and agencies are consulted for comments and recommendations: the Forestry Branch of the Department of Agriculture and Forestry regarding wooded parcels at reasonable prices (usually up to $150/acre); the Fish and Wildlife Section of the Department of the Environment regarding marsh areas; the Department of Tourism, Parks and Conservation regarding properties of recreation potential or conservation interest, and properties lying within one mile of the National or provincial parks; and the Land Development Corporation regarding large agricultural blocks at sales values consistent with their purchasing policy.

> The Land Development Corporation acts as the purchasing agent for the province. When case review indicated a denial and the desirability of obtaining the property in the public interest, the petition is turned over to the Land Development Corporation. It, in turn, solicits an appraisal from the Land Valuation and Assessment Branch of the Department of Finance. It has long been government policy to approve the petitions if the province or the Land Development Corporation, for agricultural purposes, cannot meet the price the vendor has negotiated with the non-resident, and similarly to deny cases where the price can be equalled. This policy has no doubt accomplished a great deal in terms of public support for the legislation.

During this era, the legislation was used effectively to halt the operations of several corporations which had began to purchase a number of parcels of property and then market them as recreational properties at prices several times higher than the original purchase price. Consent for such transactions was denied at the time of resale on several transactions. Eventually the corporations stopped buying properties in the province.

Concern that some non-residents were not carrying out their stated intent, in accordance with their petition for consent to purchase, after permission had been received led to a land identification program. While the legal basis was provided by an amendment to the *Planning Act* in 1974, the program came into effect in 1977. Land identification was applied to non-resident and corporate purchases, as well as to lands purchased by farmers from the Land Development Corporation. This program continues to allow land to be identified as either agricultural or non-developmental for a ten-year minimum. Land identification agreements for agricultural use include statutory covenants requiring the landowner to exercise minimal maintenance standards to provide stewardship over the land.

Table 2 outlines the data on Land Identification Agreements over the past decade.

TABLE 2

Year	Number of Applications Non-Resident	Corporate	Number of Land Identification Agreements Signed
1980	141	89	78
1981	155	174	150
1982*	98	76	49
1983	102	38	23
1984	109	42	4
1985**	92	46	2
1986***	111	48	2
1987	93	41	0
1988****	138	50	20
1989	172	56	89
TOTAL	1211	660	417

* Legislative changes that broaden exemptions

** Processing fee of $500 enacted

*** Beginning in 1985, agreements were not signed but were registered as a condition of approval. A'l agreements were non-development ones (not agricultural use agreements) beginning in 1985.

**** Additional amendments reduce applications; family transfers, bequests now exempt.

Data does not include land identification agreements signed in connection with L.D.C./A.D.C. properties.

SOURCE: Annual Reports of Land Use Commission (1980-1989) [Based on calendar year] and staff at L.U.C.

In January of 1980, the Land Use Commission presented its "Report to Executive Council on Non-Resident and Corporate Land Ownership". In it, the volume of transactions that have fallen within the scope of the *Real Property Act* since its amendment in 1972 were outlined, as found in Table 3 below.

TABLE 3

YEAR	NUMBER OF PETITIONS	TOTAL ACREAGE
1972	237	16,672
1973	262	18,850
1974	270	19,994
1975	154	11,510
1976	180	10,665
1977	153	10,522
1978	149	8,340
1979	115	8,393

Using this data, the Land Use Commission argued for a relaxed approach to the application of the *Real Property Act*. At pp. 3-4 of the Report, the Land Use Commission stated:

> It is noticeable that the number of petitions and acreage applied for rose to a peak in 1974, and has since dropped to less than half of that year's total.
>
> *In quoting and using non-resident and corporate land ownership statistics caution is necessary.* Recently the Land Use Commission carried out an analysis of the total acreage approved for sale or transfer by the Lieutenant-Governor-in-Council in the years 1972 through 1975. *Of a total of 52,000 acres approved for transfer, only 26,000 acres was in non-resident ownership by 1979, as determined from Department of Finance assessment records. For the remainder, the non-resident owner had sold it back to an Island owner, or he had moved to the province, or in some cases the original transaction was never carried through to completion. This occurred in a period of four to seven years. Over the long haul it is not unreasonable to expect that an even higher percentage of the lands approved for non-resident purchase in 1972-75 will return to Island ownership. It is easy to draw an alarmist conclusion from non-resident statistics. A more sober analysis indicates that a large proportion of the land approved for non-resident acquisition will eventually return to Island hands.*

> In recent years approximately one-third of all petitions involved gifts and wills. In the vast majority of cases these involve family transactions, an area in which the province's involvement should be minimal.
>
> At the same time, almost one-quarter of all transactions are from one non-resident to another. These obviously do not represent any net loss to the province. It should be noted, as well, that in a large proportion of cases there is an Island connection to the transaction - the non-resident is a former Islander, related to Islanders or in some other way connected to the province.
>
> The conclusion which the Commission draws is that, given the current level of non-resident transactions, *there is not much long term likelihood that Islanders will again become tenants in their own land as a result of the kinds of non-resident transactions that are occurring at the present time.* The fact that the great majority of petitions are approved, sometimes cited as evidence that the program has no teeth, seems rather to us to indicate that most petitions are of the type that should be approved, unless the province wishes to isolate itself from the rest of Canadian or North American society. [Emphasis added.]

We submit that the analysis of the situation by the Land Use Commission was seriously flawed.

A study prepared in 1980 by Esther Kienholz of the Maritime Resource Management Service (*The Land-Use Impacts of Recent Legislation in P.E.I.: An Analysis of the Land Development Corporation and Non-Resident Ownership)* provides data on land transactions between 1972 and 1976. Table 4 encompasses the data presented in Kienholz in her analysis.

TABLE 4

Non-Resident Land Ownership Petitions,
1972-1976

Year	Petition Status	No. of Petitions	Area (ha)
1972	Approved	192	4,942
	Denied	46	1,826
1973	Approved	182	5,362
	Denied	54	1,620
1974	Approved	253	9,184
	Denied	35	998
1975	Approved	128	3,610
	Denied	12	340
1976	Approved	156	3,666
	Denied	12	468

Kienholz was of the view that the legislation operated as a deterrent in controlling the rate of non-resident acquisition of land in the province. Accordingly, she wrote at pp. 9-10:

> Between 1972 and 1976, 1,083 petitions were submitted by non-residents, involving a total of 33,342 hectares (82,390 acres). Of the total number, 911 petitions were

> approved, 159 were denied, and 13 were cancelled. During the period 1972-76, approximately 138 kilometres of shore frontage were approved for sale, while 31 kilometres were denied. In 1975, the total shore frontage of petitions decreased to one-third of that in 1974. Since then, small increases have occurred but remain lower than in the pre-1974 period. . . .
>
> The location of petitioned land is distributed across the province with the eastern end of Kings County having the greatest concentration. Of the total area for which petitions were made between 1972-76, about 60 per cent of the land was wooded and 40 per cent cleared. Approval was given to 90 per cent of the cleared land, but only 80 per cent of the wooded land.
>
> *The ability of Executive Council to deny petitions deterred the rapid spread of non-resident land ownership. Approximately 15 per cent of petitions submitted between 1972-76 were denied due to an unacceptable intent of use, or because the land was required for public use.* Speculation was considered as an unacceptable use, and no petition was approved if this was the intended use. Seasonal residence was often not considered to be an acceptable use, as well. On the other hand, applicants intending to take up permanent resident and farm the land generally received approval to purchase. During the early years when the value of forest land was low, a substantial amount of denied land was purchased by the Provincial Government and leaked to L.D.C. [Emphasis added.]

We submit that a meaningful and purposeful application of policy guidelines in exercising the discretionary role contemplated in the legislation, together with the publicity, however erroneous, surrounding the decision of the Supreme Court of Canada in 1975, can be looked upon as essential factors in tracing the decline in the number of petitions. Moreover, the Land Use Commission failed to note that the amendment of 1975, exempting many testamentary dispositions from the regulatory process, would have a significant effect on the number of petitions. It was equally misleading to compare the total acreage approved for sale or transfer in the period 1972-1975 with what was held in 1979 because of those approvals, without taking into account the testamentary dispositions as a separate component. It would not be unreasonable to assume that land transfers resulting from testamentary dispositions would result in a high incidence of re-sale by non-resident beneficiaries and the Land Use Commission should have isolated this factor in making its analysis.

In any event, the Land Use Commission recommended, in essence, that the approval of individual non-resident petitions should become perfunctory. *In tendering this advice, the Commission failed to provide any statistics on the extent of non-resident ownership.* Instead, it concentrated its efforts on urging more signficiant measures to control corporate land ownership and urged new legislation to cover what it termed "glaring loopholes in the existing legislation" and to fill a void caused by "no government policy in this area specifically directed at corporate purchases". The result, eventually, was the *Lands Protection Act*, R.S.P.E.I. 1988, cap. L-5, enacted in 1982. Under this legislation, the ceiling on non-resident acquisitions without consent was reduced to five acres with the shore frontage amount reduced to 165 feet. Testamentary gifts were excluded by regulation.

In view of our discussion on soil erosion and soil degradation in another portion of this report, the Land Use Commission's concluding advice to Executive Council in 1980 takes on new meaning. The Land Use Commission stated at pp. 10-11:

> We note that Executive Council has recently received a report "Soil Erosion on Prince Edward Island", which emphasizes the large amount of erosion occurring throughout the province. Although the report does not relate soil erosion to farm size, it seems evident from a close reading that large farms growing row crops are the most serious offenders. The report recommends that soil erosion not be viewed as a pollution problem, with the offenders being forced to clean up their act, but rather as a social problem, with society as a whole bearing the cost. The Commission cannot agree entirely with this approach.
>
> Would there not be some merit in requiring farmers, over a sufficient period of time, to stop polluting streams and estuaries, by meeting a series of performance standards? In our view the logical place to start would be with the largest pollutors, say those with over 2000 or 2500 acres. These farms might be given 5 years to conform to a set of standards established by the Department of Agriculture. Non-compliance would result in stiff fines or certain works being done at the owner's expense. Small farmers would be given a longer period to comply and the financial assistance which the report recommends would be extended to them.
>
> Such measures would have several purposes:
>
> 1) large farms would be discouraged or at least would pay the price of their largeness by conforming with high environmental standards,
>
> 2) processors might well decide that the cost of becoming large is too high and rely for the bulk of their production on other farms,
>
> 3) both an environmental and a social problem would be attacked at the same time.

In hindsight, it would appear that the links between patterns of land tenure and soil erosion, identified in recent studies, had not been considered as a potential factor. But, in view of the information now emerging from studies elsewhere - information that correlates absentee ownership with poor land stewardship - we pose this provocative question: *Are the land identification agreements, which effectively encourage leasing properties but which have only minimal stewardship requirements in some circumstances, contributing to soil erosion and soil degradation?* We do not have the answer, but we suggest to the province that *it is in the public interest to conduct whatever additional studies may be necessary to find a satisfactory response to the question.*

Simultaneously, we would ask what steps have been taken by the Land Use Commission to enforce their land identification covenants? Has the Land Use Commission ever compelled a property owner to remove alders and weeds from vacant land?

We are of the view that the province needs to take a serious, in-depth look at non-residency ownership. In our discussion on subdivisions, we consider one dimension of this situation in the context of the seasonal residents. Here, we consider the non-resident, absentee owner essentially in terms of someone owning vacant land. Admittedly there are some "overlaps" since the non-resident may own a large amount of land with a seasonal residence on it.

Some of the study that has been done in other jurisdictions raises serious concerns.

The 1973 Royal Commission on Land Ownership and Land Use touched the tip of the iceberg, so to speak, but its stance that ownership was essentially immaterial if land use was properly regulated meant that it did not grapple with the issue. That it was very much aware of one key component is obvious from the following excerpt, found at pp. 1-3ff. in Volume II of its Report. [Volume II, prepared by Mary Rawson, was essentially the background report on "minimum maintenance", a land use regime advocated by the 1973 Royal Commission to ensure stewardship of the land.] Ms. Rawson wrote:

> In 1966 the Ontario Economic Council published a study on "rural Ontario's marginal and abandoned acres" selecting a sample of townships, six in all, from widely scattered parts of the Province and covering 250,000 acres of land. The OEC found, among other things, that *two-thirds of the total acreage in these townships was substantially idle;* that the soils now being farmed correlated almost perfectly with the areas of more suitable soils; and that *unoccupied land owned by non-residents amount to 68,000 acres or 27% of the total area.* [Emphasis added.]
>
> *The study is significant for its establishment of a direct relationship between "idle lands" and "idle hands" and its attempt to measure public costs and revenues specific to the areas.* (The description fits the PEI case only too well.) [Ms. Rawson said.] [Emphasis added.]
>
> "The total population of the six townships has over the past 60 years remained relatively constant. In 1961 it was up only 3% of 1901, and all and more of that increase had taken place in the preceding decade.
>
> The forests, which were a source of income to almost every resident at the turn of the century, no longer contribute significantly to the local economy. Of the local markets for farm products, few remain.
>
> Though total population is approximately the same, *assessment values and the related tax yield from a reduced number of farms and large areas of idle land now bear only a small resemblance to local municipal operating costs. The slack has been taken up in large part by mounting provincial grants* to municipal governments and school boards. Initiated in 1942, these grants by 1964 reached a total of $275,829 or well over $1 per annum per acre, and over $81 per annum per permanent resident. [Emphasis added.]
>
> Five of the six test townships received provincial grants, entirely apart from educational subsidies, in excess of their total local tax income from property and business. . ."
>
> Of particular interest to PEI, for comparison with its own Socio-Economic Survey of 1967-69, is a pamphlet published by the Ontario Department of Lands and Forests, *Rural Lands and Landowners of Southern Ontario.*
>
> The pamphlet generalizes on a 1969 sample survey of landowners having a minimum of 50 acres of land. The eight counties studied take in only 13.5 percent of Ontario's land area but nearly all of its agricultural areas and 90 percent of its population.

The great majority of ownerships (87.9%) are, as might be expected, single or joint ownerships. About 60% have held the land less than 20 years and only 3.3% have held it 50 years or more. Inheritance and gift are *decreasing* as a method of property acquisition. . . . [Emphasis original.]

"The reasons for buying have also changed.

Historically, agriculture has consistently ranked as the major motive for land purchase; however, there has been a major shift among the relative positions of the secondary reasons. For those landowners buying prior to 1920, commercial timber production was the major secondary reason. In the 1930's this motive had dwindled in stature such that it held fourth position, and by the 1960's it could barely be included in the top ten reasons for land purchase. Meanwhile, new permanent residence and personal recreation purposes had come up to occupy the two respective positions after agriculture."

Eight of every ten rural landowners in Ontario (50 acres or more) have woodland on their property. Although there has been woodlot management advice available in Ontario since 1905, only 10% have ever asked for it and only 40% have ever undertaken any "woodland activities".

Only 58.6% of the owners were farmers, but the largest average size of holding was that held by businessmen (253 ac. as compared to 218 ac. for farmers).

75.5% of the owners lived in the same township as their property was located in. Of the 24.5% classed as "non-resident" almost a quarter spent no time on the property, another quarter spent up to two weeks, and another quarter up to two months. . . . Apparently correlated with this is the fact that *half had no accommodation on the site.* [Emphasis added.]

Both the foregoing studies and a more recent one from the University of Guelph draw attention to a new source of complication in farmland abandonment - the urban buyers. These buyers are not only taking up the submarginal farmlands - usually for recreation or more vaguely speculative reasons - but any land within the urban shadow, *good agricultural soil as well as poor.* [Emphasis added.]

Guelph researchers find that Toronto has had a significant effect on agricultural land use up to 50 miles or more from the city through spreading rural low density residence and the idling of interspersed lands. . . . The OEC study showed that smaller towns have their effects too.

Farm houses *are* used as inexpensive and convenient housing near town but there is also substantial evidence of a growing interest in the reverse, in "acreage" developments - which have a strong flavour of recreation and "back to the farm" nostalgia. This interest, as the OEC study notes, is strongly aesthetic not financial. [Emphasis original.]

Finally, *there is the trend to purchase specifically for recreation purposes whether it be a lot and cottage used for two weeks or two months of the year; or five, ten or a hundred acres of idle land never visited at all except in dreams.* The OEC comments are particularly concerned with this group:

> "Of the idle land, 68,000 acres is owned by persons living outside the townships and in most instances at some distance. This represents over one-third of all private landholdings. Some 22,000 acres, for example, are held by residents of the USA. *These landowners appear content in the main to pay their local taxes and let the land remain unproductive.* In all instances these land taxes are subsidized by the province with the net effect that the province is, therefore, not only not discouraging, but in effect, is encouraging the absentee owners to make no productive use of the land. [Emphasis added.]
>
> To provide a worthwhile incentive to improve land use by such absentee owners, however, would probably involve a combination of penalties for idle use and rewards for productive use. In the latter instance the services of some local agency would also be required because there is little evidence to suggest that the owners themselves would be prepared to become personally involved to the extent of much more than their current dollar investment."
>
> Tax yields on these unoccupied non-resident lands averaged 26¢ per acre. Since the total cost of all services for the townships studied was $1.62 per acre (i.e. 52¢ in taxes and $1.10 in grants) this 68,000 acres created a deficit on average of $1.36 per acre to be carried by other taxpayers and the Province.
>
> *Cottage lots were not separately analyzed in the OEC study but information available indicates that cottagers do not contribute much to local economies either.* [Emphasis added.]
>
> These studies of abandoned and marginal farm areas in Ontario are useful to the PEI case for several reasons. They show the similarity of underlying causes of abandonment. They offer analyses both of the remaining farms and farm populations. *They add an estimate of public cost that is lacking in PEI.* They describe further developments in the process of change; and point up possible adjustments. In short, these studies provide a context that fortifies and illuminates the present-day picture on PEI, where farm abandonment is, by comparison, a recent phenomenon. *They also reveal a new concern with land tenure* . . . [Emphasis added.]

The Rural Development Outreach Project at the University of Guelph carried on research into absentee ownership of Ontario farmland as a result of a request for the Huron [County] Federation of Agriculture in June of 1979. As a result, Julius A. Mage, Heather A. Clemenson and Grant Lee authored *Foreign Ownership of Farmland in Canada and the United States: Legislative Controls, Literature Review and Annotated Bibliography.* The authors discussed the control of absentee land ownership, at pp. 6-8, in these terms:

> There has been mounting pressure on federal and provincial governments and state legislatures from various sectors of the economy, not least the farm community, to impose some measure of control on absentee land ownership. This begs the question of the rights of the individual to own land and the freedom of choice to decide on the use of that land. Through the purchase of property an absolute owner is awarded certain inalienable rights in land that include:
>
> a) the right of possession including the right to recover possession when wrongfully taken away,
>
> b) the right of full enjoyment in the land area owned,

> c) the right of disposition either total or partial as when land is sold, leased, pledged or mortgaged.
>
> Any form of control that, for example, restricts the sale of land by private owners to non-residents impinges on the rights of ownership. In addition, one of the dilemmas facing a national government is to what extent would the imposition of controls over foreign land ownership have repercussions on investment in other sectors of the economy and possibly lead to reciprocal impositions and controls. Particularly in the Canadian context historically a substantial proportion of development capital for resources and industry has come from external sources.
>
> *It can be argued, however, that it is not ownership which is ultimately important but control over the use of land. While there is much to be said on this viewpoint, planning alone is incapable of preventing foreigners from acquiring an ever growing amount of land and the fact that title to land is held by someone outside the country implies that capital could leave the economy irrespective of land-use policy. A general conclusion would seem to be that 'land ownership and land use are intimately connected and any long-term policy should involve a combination of controls on both.'* [Emphasis added.]

To date a variety of strategies have been adopted or proposed either to control absentee land ownership and/or to acquire information as to its growth and extent. Such approaches fall into four main categories:

> 1) *Control through sales* - direct limitation of land purchase by non-residents, non-citizens, foreigners or corporate bodies either by a blanket ban or by placing ceilings on the extent of acreage that can be owned, or by regulating purchases by screening applications over a basic minimum acreage.
>
> 2) *Discrimination via taxation* - the imposition of differential taxes on land for foreign and non-resident owners, either at the time of sale to deter purchase, or on non-resident owners holding land to ensure that local owners do not bear the burden of increased property assessments resulting from development undertaken by non-residents.
>
> 3) *Disclosure laws* - legislation to impose some form of compulsory land registration or investment disclosure that provides information on place of residence, citizenship and other pertinent data concerning *all* land owners in a given area or discriminating against foreign and non-resident owners.
>
> 4) *Land-use controls and zoning* - the introduction of policies to freeze land areas for specific uses, to prevent loss of farmland resources and to discourage the purchase of land for speculative motives. Plus the imposition of maintenance standards with the levy of fines for neglect of upkeep.

It is worth noting that the conclusion they cited, with apparent approval, is attributed in the footnotes to an interview with the then Premier of P.E.I., Alexander B. Campbell. Equally, it is worth noting that the authors, after reviewing Canadian and American jurisdictions, were able to state, at page 38:

> P.E.I. with virtually no Crown land in comparison to other provinces has been at the forefront in enacting legislation to control the purchase of privately-owned land by non-residents. In terms of land ownership and land-use policy P.E.I. appears to have the most comprehensive and integrated approach of any province to date.

This canvass of other jurisdictions by Mage and others showed extensive evidence of controls over the absentee ownership of farmlands in a number of other jurisdictions. We have noted, in Appendix D of Volume II, many of the measures we understand to be in place in Canada at present. Most of these were already enacted when the Rural Development Outreach Project compiled its information and provided this "provincial summary" at pp. 31-3:

> The extent and perceived problem of absentee land ownership varies from province to province and each government has devised different policies and strategies accordingly though there are similarities in the approaches adopted to date. In the Atlantic provinces the major issue has been the increasing purchase by non-residents of recreational land, one of the regions most valuable assets, while in the Prairie provinces greater concern has been expressed over the loss of ownership control as agricultural land has been purchased by non-residents. Elsewhere, in Quebec, British Columbia and Ontario and on the rural fringes of major metropolitan centres throughout Canada the removal of land from agriculture, particularly for speculative motives and for urban and industrial development, often linked with foreign investment, has been a major issue.
>
> . . . While seven out of the ten provinces presently have some method of monitoring foreign or non-resident land acquisition, whether directly by registration or indirectly by taxation records, only four have enacted legislation over the past decade to regulate or restrict non-resident purchase and ownership of agricultural land. Alberta and Manitoba have imposed acreage limits on foreigners but have not restricted land purchase by non-resident Canadians and landed immigrants. Saskatchewan has placed a blanket maximum on land purchases by *all* out-of-province residents while P.E.I. does not actually prohibit foreign or non-resident Canadian ownership but regulates *all* out-of-province purchases above a basic minimum acreage. Ontario has attempted to deter absentee land ownership by means of a tax on the sale of land to non-residents. British Columbia, Quebec and, to a lesser degree, Newfoundland have tended to favour controls of land use rather than ownership while Nova Scotia and New Brunswick appear to have no laws or policies prohibiting or regulating private land sales to non-residents or demarcating specific land-use zones.
>
> *By the mid-1970s most of the provinces prohibited foreigners from buying Crown land and the trend appears to be toward greater restrictions for leased land.* For example, five provinces, Newfoundland, Nova Scotia, Manitoba, Alberta and British Columbia restrict the granting of Crown land to non-residents and Ontario and Quebec have different policies for residents and non-residents regarding the leasing of certain Crown lands. *Only Saskatchewan and New Brunswick appear to have no restrictions on the granting of Crown land to foreigners.* [Emphasis added.]

Concurrently, many of the American jurisdictions either had controls in place or were grappling with the issues. After reviewing these, the authors noted: "[b]y 1979 . . . 23 states had instituted varying forms of statutory restrictions on the alien purchase of farm property".

Foreign Ownership of Farmland in Canada and the United States: Legislative Controls, Literature Review and Annotated Bibliography demonstrated that P.E.I. was at the "leading edge" in dealing with non-resident issues throughout the 1970's. It also demonstrated that the central thrust of concern in many jurisdictions was centered more on the loss of farmland from encroaching urbanization, rather than the loss of farmland for recreational needs.

Elsewhere we have recommended the study of vacant farmland in the context of agricultural preservation (and other land use components). This issue must also be examined, too, from the context of non-resident ownership.

Current information is a must in order to be able to effect good land use policies. As we point out earlier in this chapter, Prince Edward Island was in the forefront of this land issue because its information base revealed the problem and policy was formulated on the basis of that data. Two decades ago, the technology available resulted in revealing the extent of the absentee ownership pattern. Such was the province's command of the land situation during the 1970's that the author of *Non-Resident Land Ownership Legislation and Administration in Prince Edward Island,* a report prepared for the Lands Directorate of Environment Canada, wrote:

> A basic information system on non-resident land ownership developed, and this system, on a provincial scale, is probably unequalled in Canada. It provides the basis for monitoring non-resident land ownership in Prince Edward Island, as well as the information necessary to study developments which have taken place during the last five years.

The province, once at the forefront in its land information base, is now seriously lagging behind other jurisdictions because of their readiness to adopt new technology. For example, in British Columbia, the province has been divided into several zones and all land titles information is being computerized to the extent that, in mid-1989, about half the zones have been brought into the system. As a result, anyone requiring information on a property in one of these zones can input the owner's name and have instant access to the property description, the chain of title and any past or present encumbrances on it.

Early in the course of our tenure as a Royal Commission, we understood the Real Property Records Division of the Department of Finance was moving forward with a GIS (geographic information systems) technology which would enable us to make analyses on a number of issues without extensive and time-consuming manipulation of raw data. Delays in bringing the GIS technology on stream, however, meant these studies could not be undertaken.

GIS technology, properly programmed, would enable the province to monitor and control non-resident land use patterns on an on-going basis, as well as analyze other data, much of it already collected by a variety of departments but unusable for land planning or correlative purposes in its present form, in a variety of ways.

Although we have not been able to examine the ramifications of non-residency ownership to the extent we would have preferred, we have collected sufficient data to enable us to draw certain conclusions and to raise a number of questions about the future.

The informational materials prepared for us by the Institute of Island Studies provided the public with some information on the quantum of non-resident land ownership by parcel size. Table 5 encompassed the essential data.

TABLE 5

Non-Resident Ownership by Parcel Size, 1988

	Acres	Parcels
Total	139,853	9,988
More than 10 acres	129,716	2,285
1 to 10 acres	10,135	7,703
Less than 1 acre	1,965	5,070

The accompanying text to Table 5 indicated that: "[t]he average size of a land parcel owned by a non-resident is 14 acres. Although only 23% of all parcels are more than 10 acres in size, they make up 93% of the total acreage owned by non-residents."

Table 6 contains a review of non-resident land sales for the period January 1, 1989 to October 2, 1989, prepared for us by the Land Use Commission. Table 6 indicates, Canadian and American purchasers make up the vast majority of non-residents interested in acquiring property in the province, with residents of Ontario and Massachusetts being the most active applicants. A review of Orders-in-Council for the period November of 1988 through September of 1990 showed a similar trend with a somewhat broader list of jurisdictions (Northwest Territories, Virginia, Wisconsin, Washington, Indiana, Nevada, Holland, Greece, Switzerland, Guadaloupe, French West Indies, England and Hong Kong) adding to the cosmopolitan roster of purchasers.

TABLE 6

Non-Resident Land Sales
January 1, 1989 - October 2, 1989

Prov./ State/ Country	Number of Applications	Total Acreage	Number of Applications re Shore Frontage	Total Shore Frontage
Nfld.	1	1.61	--	--
N.S.	5	508.73	3	1,560
N.B.	1	5.14	1	300
P.Q.	6	181.18	3	1,648
Ont.	36	1180.01	17	10,211
Man.	1	2.00	1	265
Alta.	4	523.60	2	8,050
B.C.	2	7.30	2	381
Maine	1	4.50	--	-
Mass.	16	350.45	13	11,829
Rhode Is.	3	57.83	3	825
Conn.	13	204.53	11	8,095
Mich.	1	5.70	1	550
N.H.	4	65.60	4	2,390

N.Y.	8	224.68	3	765
N.J.	1	28.00	1	800
Ohio	1	33.00	1	416
Md.	2	26.29	1	500
Del.	2	57.00	1	600
Fla.	3	61.00	3	2,780
Penn.	1	15.00	1	1,140
Va.	2	40.00	1	275
Ca.	2	23.23	2	1,265
Japan	1	.96	1	190
West Germany	1	83.00	—	-
	118	3690.34	76	54,835

SOURCE: Land Use Commission data.

Particularly alarming in the raw data used to compile Table 6 is the information on applications regarding shore frontage. Of these 76 applications, 14 involved shore frontage of 1,000 feet or more. Among these 14 applicants were 4 where shore frontage amounted to 2,000 feet or more. Three of these applications involved Prince County, including two that exceeded half a mile of shore frontage. The largest of these encompassed a whopping slice of 7,300 feet of shore frontage and 300 acres of land, while a well-known "developer", Burt Hayman, was seller in a transaction that involved 2,733 feet of shoreline and 50 acres of land sought by a Connecticut purchaser. All of these transactions were ultimately approved by the Lieutenant-Governor-in-Council.

To obtain more information on non-resident land ownership, we went to the Real Property Records Division in the Department of Finance with the request that the computerized taxation records supply us with data on property owners to whom property tax bills were sent to out-of-province addresses. The resulting information must be read with some care for three reasons. First of all, the data is processed using the old school districts (before school consolidation) as the district base for the data. [This makes comparisons over the years easy because the base has not changed but we question whether it should continue under a GIS system.] Secondly, the information is provided in terms of properties, not property owners. Consequently, the non-resident who has more than one property receives several tax bills and, accordingly, the number of properties would be higher than the number of non-resident owners. To some extent this is off-set by co-ownership of properties and by non-residents who have provided an in-province address for taxation billing purposes. Thirdly, the data would include commercial establishments where, for example, taxation bills might be sent to off-Island regional or head offices. (Some, perhaps most, of the 139 properties in Charlottetown for which taxation bills are sent to out-of-province addresses, illustrate the point.)

The information released from these computer files confirmed that non-residents have property throughout the province but the greater concentration of non-resident ownership is along the coastal areas, particularly in northern and southern Queens and Kings counties as well as the northern-central sections of Kings county.

Table 7 lists many of the school districts where some of these 10,471 properties totalling 136,956 acres of land are concentrated.

TABLE 7

Non-Resident Taxation Data

Name of District*	Number of Properties**	Total Acreage
Birch Hill	46	239
Foxley River	25	2,945
Cascumpec	51	681
Skinner's Pond	35	550
St. Felix	93	246
Kildare Capes	73	654
Kildare Central	47	242
Mill River East	37	28
Fortune Cove	94	55
Victoria West	43	286
Union Corner	55	507
Mont Carmel	43	301
Cape Egmont	29	336
Wellington Centre	17	1,080
Fernwood	94	82
Chelton	77	89
Augustine Cove	56	39
Kensington	38	191
Indian River	25	333
Darnley	189	417
Woodstock	24	393
Tignish	58	129
Fanning	91	156
Alberton	45	140
Brooklyn	74	51
Anglo Tignish	53	159
West Point	56	296
East Bideford	44	646
Desable	64	144
Cavendish	79	99
Long River	40	660
Stanhope	159	128
Appin Road	11	321
Victoria	42	68
Clyde River	16	247
Blooming Point	28	300
Glenfinnan	18	18
Wheatley River	25	486
Hope River	26	136
Stanley Bridge	196	435
New London	126	396
Clinton	46	486
Seaview	77	432
Springbrook	29	779
St. Anns	17	557

Anglo Rustico	127	334
Wheatley	39	292
Rice Point	34	127
Wood Islands East	49	892
South Pinette	43	374
Point Prim	53	631
Argyle Shore	48	345
St. Andrews	39	891
Tracadie Cross	20	703
Millcove	43	151
Crossroads	69	50
Mermaid	35	131
Mount Herbert	12	54
York Point	30	174
Park Corner	84	1,058
Brackley Point	99	383
St. Augustine	89	205
Grand Tracadie	158	1,297
Canavoy	35	653
Savage Harbour	139	475
St. Peter's Harbour	87	584
St. Peter's Lake	111	489
Greenwich	22	924
St. Peters North	64	870
Cable Head West	28	845
Cable Head East	62	611
Monticello	25	864
Goose River	62	1,397
Fortune Bridge	33	275
Eglington	63	377
St. Margarets	86	1,980
Chepstow	28	140
Rock Barra	67	2,153
Priest Pond	29	632
East Baltic	16	412
Little Harbour	23	517
Red Point	67	551
Murray River	56	1,239
Georgetown Royalty	42	509
Annandale	27	300
Panmure Island	28	292
Poplar Point	47	2,003

* Based on the School District boundaries before school consolidation.

** Refers to number of properties in the school district to which property tax bills are sent to an out-of-province address.

SOURCE: P.E.I. Department of Finance, Real Property Records Division.

If each property owner has only one property in the district, then there are as many non-resident land-owners in Savage Harbour as there are in Charlottetown and there are more non-resident landowners in Launching than there are in Cavendish!

Table 8 includes some of the additional information we were able to obtain through property taxation records.

TABLE 8

Non-Resident Taxation Data

	Prince	Queens	Kings
Total number of properties*	3,465	4,036	2,966
Total acreage	39,359	39,839	57,755
Taxable assessment (commercial)			
Number of properties	203	317	96
Value of assessment	$39.6m	$100.7m	$8.2m
Taxable assessment (non-commercial)			
Number of properties	3,259	3,741	2,859
Value of assessment	$38.8m	$70.8m	$32.7m
Total Market Assessment	$78.4m	$171.6m	$40.9m

* Properties where the tax bill is sent to an out-of-province address. A property owner may have more than one property so the total number of non-resident property owners would be less than these figures represent.

SOURCE: P.E.I. Department of Finance, Real Property Records Division.

Table 8 shows that only 618 of the 10,471 properties are subject to commercial assessment. Significantly, Kings county has the least number of properties with out-of-province owners but the acreage involved is appreciably higher than in the other two counties. It also has a much lower number of commercial properties owned by out-of-province taxpayers and the total market assessment for Kings County land in the hands of non-resident taxpayers is much lower. All of these indicators suggest the incidence of absentee landowners - where non-residents have vacant properties with no accommodations - is highest in that county. Is this related in any way to the comparatively under developed state of Kings County?

The property tax information also supplied us with some other pieces of interesting data on the patterns of non-resident land ownership and land use. The Department of Finance divided these 10,471 properties into the following categories:

Residential	2,330
Recreational	4,710
Farm	2,663
Other	610
Uncoded	158

It would appear that the 618 commercial properties fall within the 610 "other" and the 158 "uncoded" properties.

The data from this source also indicated that the average size of property owned by an out-of-province taxpayer is 13.079 acres. (This average may be somewhat higher if commercial properties were excluded from the calculation.) Among the 9,861 non-commercial properties, the total assessment (for 1990) amounted to $142,459,800; this represents an average of $14,446 for each property. Again, the data suggests a high incidence of vacant land being held by non-resident taxpayers.

In addition to taxation data, we examined all Orders-in-Council issued under the *Lands Protection Act* for the period November, 1988 to August, 1990. These Orders-in-Council included both applications in relation to non-resident landowners and corporate landowners where the companies might or might not be resident corporations. With an amendment to the *Lands Protection Act* in mid-1990 that ended the exclusion for farm corporations, the number of Orders-in-Council suddenly swelled. But these factors resulted in a composite picture that did not reflect with any validity the non-resident ownership profile. Consequently, we selected only those Orders-in-Council bearing an out-of-province address for the intended purchaser in preparing Table 9. While the data then would exclude any non-resident individual or corporation who had a local address on the Order-in-Council, Table 9 provides a realistic portrayal of the perfunctory way in which the discretionay consent has been granted by the Lieutenant-Governor-in-Council in exercising its powers pursuant to the *Lands Protection Act*.

TABLE 9

Lands Protection Act Orders-in-Council
Non-Resident Land Ownership Applications
November, 1988 - August 31, 1990

	1988	1989	1990	TOTAL
Total number of Orders*	23	174	88	285
No. approved	22	173	88	283
No. denied	1	1	0	2
Total number of acres	1024.01	5523.65	4061.25	10,608.91
No. approved	855.01	5490.65	4061.25	10,406.91
No. denied	169	33	0	202
Total number of Orders with Corporate purchaser	1	6	21	28
No. approved	1	6	21	28
No. denied	0	0	0	0

* Does not include Orders-in-Council rescinded in this period

We are of the opinion that the present trend of approving almost all non-resident land transactions cannot continue.

There is mounting evidence that corporations whose activities were ceased by government denials of transactions during the 1970's are now taking tentative steps to become involved once more in the Prince Edward Island land market. Unconfirmed reports indicate that at least one of these enterprises is actively acquiring properties through a local trustee arrangement.

The *Financial Post Moneywise* magazine of November, 1988, included an article on the H. M. Dignam Corporation, which had been among the companies that was effectively curtailed from peddling real estate in the province once the *Real Property Act* provisions denied a number of its transactions to non-resident purchasers. Under the heading "Dirt, cheap: Dignam sells land in all scapes and sizes", the *Financial Post Moneywise* article described its operation in these terms:

> From across Canada and around the world, testimonials from satisfied customers arrive regularly at the Barrie, Ont., office of the H. M. Dignam Corp., a unique land company that has been pointing the way, since 1916, to owning a piece of Canada.
>
> Dignam is not a broker. The company buys cheap land through city hall tax sales, estate auctions and private deals - then sells the parcels at a small markup. A property purchased by Dignam for $5,000, say, will sell for about $8,000, which includes the cost of a title search, legal fees, advertising and a small profit for the company. Dignam's properties are sold through a catalogue advertised in outdoors magazines. A one-year subscription to the catalogue, which includes eight issues, costs $15.
>
> The April 1988 "Spring Sell-off" issue listed 78 properties, including large tracts in the British Columbia mountains going for about $25,000, and *small lots on Prince Edward Island*, lake-front land in Nova Scotia, 20-hectare wooded wonders in southern Ontario and extensive parcels in the northern Ontario bush, each for less than $10,000. [Emphasis added.]

In a later issue (*Financial Post Moneywise,* April, 1989), author Harriet Eisenkraft examined the issue of absentee landownership from the purchasers perspective under the heading "The Dream of Land: Is it a Solid Investment?". After describing the Dignam company and other sources for acquiring outdoor properties, Ms. Eisendraft provided her readers with some samples from across the nation:

> Muskoka, Ont. - 100- by 250-foot lot with 100 feet of frontage on Three Mile Lake, with year-round road access but no building on the property; $55,000; 100- by 250-foot property on a small lake with shoreline frontage, 756-square-foot summer-only cottage and year-round access; $125,000;
>
> King City, Ont. - a two-acre lot near a historic village just north of Toronto; $285,000 to $320,000;
>
> Gulf Islands, B.C. - 10 acres on one of the less developed, remote islands; $57,000; one-acre lot on a bigger, developed island; $100,000; a 50- to 100-acres private island, with old building, among the south islands $2 million plus;
>
> *King's County, P.E.I. - 25 acres with 330 feet of oceanfront on the sparsely populated east coast; $20,000 to $50,000 depending on quality of land and proximity to services;*
>
> Northern Alberta - 100 acres of wooded farmland in the Peace River area near Worsley; $11,900;
>
> Saint-Sauveur, Que. - a 20,000-square-foot lot just outside this mountainous ski area north of Montreal, with year-round road access; $30,000 to $40,000. [Emphasis added.]

Items such as this confirm much of what was told to us during our public hearings. For example, one respondent cited the experience of Ontario friends who were interested in investing in property for a future recreational home. After exploring the market, they found real estate prices in areas *beyond* a two-hour driving radius of Toronto sufficiently high that, they calcuated, they could purchase a more spacious Island property, travel to P.E.I. by air several times each year and (taking into account interest on the money tied up in the transaction), *save* money!

The land base in the province is the source of our economy. It is too small to provide land "visited only in dreams" for those who have sufficient affluence to indulge in these dreams but who are unwilling or unable to acquire sufficient land elsewhere to satisfy their goals. Yet the present "open door" policy on the application of the *Lands Protection Act* is permitting non-residents to do just that and title to more and more acres is slipping away under the monitoring mechanisms designed to prevent this from happening!

At what point in our evolution do we say "enough"?

During the course of our deliberations, our Chairman met briefly with one of the delegates on his way to attending the Commonwealth Parliamentary Conference, to which reference is made in Appendix D of Volume II. From this we learned that that particular small island was concerned about foreign ownership as foreign nationals had now acquired some 40-50% of the land area. Local residents there were demanding not only controls to prevent further acquisitions but measures to reduce this ratio. We were of the view, on hearing this, that a significant proportion of non-resident ownership of this magnitude spells a situation that is "too late" for remedial action, unless an expensive program of buy-back is instituted. Further, we were of the view that such a scheme - once used here to solve the absentee landowner question - is beyond the fiscal competency of the province. Consequently, *government must decide that residents of the province have a priority right to land ownership and that an ample proportion of the province must be available to them in the exercise of that right.*

That, of course, does not answer the question of when the line is crossed that calls for stern control measures. Indeed, the answer is, in our view, more complex than simply looking at the quantum of land held by non-resident owners. That has been the traditional measuring tool in evaluating land ownership in the province. But, we think it is also important to examine the data on ownership from the perspective of what force these owners represent. During the original Land Question one dimension of the situation, often under-emphasized in the debate that priorized the proportion of land in the province controlled by the absentee landowners, was that the landowners were relatively few in number but well-connected in their positions of power.

In our discussion on Land Ownership vs. Land Use we considered the non-resident factor from the standpoint of the controversy over Cavendish Farms. The single non-resident landowner who has a large quantum of land in the province represents one aspect of the non-resident ownership question. If the non-resident ownership of land in the province were characterized essentially by this type of owner, we submit that the matter would have different dimensions than what we, in fact, have, for the non-resident owner that has large tracts of land is the exception rather than the rule.

Instead, non-resident land ownership patterns represents a mixture of owners. Many have small acreages which, unless they have shore frontages, do not require the consent of the Lieutenant-Governor-in-Council. Often these are either recreational properties or vacant lots being held for recreational or investment potential. Others are larger acreages, whether intended for recreation and/or privacy or for investment.

The cumulative result is that there are now almost 10,000 non-resident property owners. The number of parcels in the hands of non-residents listed as 3158 in 1973, has more than tripled. (See Appendix G of Volume II.) In twenty years, the amount of land held by non-residents has doubled.

Too often the debate on non-resident ownership has been focused simply on the respective rights of the buyer and seller, or the friendships and other social intangibles that accrue on the individual level from having a cottage neighbour "from away". We are of the view that the issue must be addressed in the collective sense.

During our public hearings there was considerable discussion on this issue. Many of those making presentations were asked their views on the subject, whether or not it was mentioned in their formal presentation. While there was a range of opinions on many aspects of the issue, *those opinions contained a general consensus of goodwill and welcome for non-residents who wanted to share in the Island by owning land in the province.* Many participants spoke of new friendships that had formed and of old relationships that continued to flourish because of some aspect of non-resident land ownership.

On the other hand, *the public expressed considerable concern over the amount of land that has moved out of local ownership and the failure of successive governments to restrict this flow.* Aside from non-residents acquiring property because they were moving to the province or because they were commencing a business that needed more than the amounts specified in the *Lands Protection Act,* many respondents questionned whether the province could continue to be generous with non-residents who wanted recreational land. Some suggested the limit should be reduced further to that of a minimum-sized cottage lot.

There was considerable dissatisfaction with the perfunctory approvals policy of successive governments over the past decade. It was thought to be an expensive "monitoring" mechanism if that was its only purpose. Any value the legislation had as a deterrent was being eroded to the point of total collapse since it was widely known that denials were a rarity. As a result of these dissatisfactions, there was some call for total change to the legislation, making limits mandatory, perhaps with a few carefully prescribed exemptions.

We are reluctant to follow that route for two reasons. First of all, the seal of approval has been given to the present regime by the Supreme Court of Canada, albeit in pre-Charter times and in respect to a slightly altered version of what is now in place. Nevertheless, the decision in the *Morgan* case is a powerful precedent, likely to deter all but the most litigious of challengers. The same might not be true of a replacement mechanism. Secondly, we are of the view there are a number of situations calling for flexibility and discretion so that new legislation might not serve as well as the existing provisions have the potential to do.

In our view, the Lieutenant-Governor-in-Council must adopt a new stance to the exercise of its discretion, one that grants permission only in pre-determined or most exceptional circumstances. That policy, moreover, must be widely known so that applicants have advance warnings that exceptions to the five acres and/or one hundred and sixty-five feet of shore frontage will be difficult to obtain. A suitable pamphlet, made available to all real estate agents and others involved in property transactions, would provide an indication of the situations where an exception *might* be made.

Under what conditions is it reasonable to grant permission to exceed the limits prescribed in the *Lands Protection Act*? In our opinion, the list would contain several provisions. Where the applicant is a non-resident who intends to take up residency within the next 24 months, the non-resident should receive consent, providing a mechanism is devised to "invalid the consent" if the applicant has failed to reside in the province for 12 of the 24 months following the acquisition. The use of a divestment order procedure, requiring the purchaser to divest himself of the property within a prescribed time (such as 1 year) might be appropriate. Further, we believe non-residents who do fulfill their intentions and take up residency should be entitled to a refund of the $500 fee now involved in processing applications, providing they can establish they have fulfilled the residency criteria. Land transfers by will or other testamentary disposition should be approved in most cases. (Recent events in Ontario have disclosed a number of instances where land controls are being by-passed by purchasers who seek out terminally-ill patients and offer to buy property, without an immediate transfer of title, providing the seller executes a testamentary gift of the property. To avoid such practices from occuring here, approvals should not be automatic. As a matter of policy, applicants should be required to establish that beneficiaries have some relationship, whether through family ties or long-standing relationships. Otherwise a divestment order might ensue.) Transactions involving federal Crown corporations should normally be approved. Where consent is a necessary prerequisite for legal reasons outside the normal buy-sell arrangement (eg. as a requirement for a partition of land between co-owners where one is a non-resident; to facilitate a property transfer in connection with the *Family Law Reform Act*; to facilitiate settlement of a legal dispute where a transfer of property between parties is required etc.) Where the applicant is engaged in commercial activities in the province and additional land is required to enlarge or expand the commercial activity and the amount of land is commensurate with the activity, consent should normally be forthcoming. Where there is a resident seller who can establish a *bona fide* case of extreme financial hardship if the transaction is not approved or where there is a resident seller who can establish the land has been listed through multiple listing for a minimum of 24 months at a price not in excess of 50% of the tax assessment value of the property and no sale has been completed, approval might be granted. Where the amount of the property involved in the transaction exceeds the prescribed limits but the parcel of land cannot be effectively severed into a smaller size without damage to the integrity of adjacent boundaries, consent should be given. Here, the applicant should have to demonstrate that topography, soil conditions or some other factor would result an unmarketable parcel of land adjacent to the five acres or 165 feet of shore frontage, if the limit cannot be exceeded. Denials should result in all cases where land is to be used for stated or apparent speculation. Where the stated or apparent intent is to further subdivide rural or coastal land for recreational use, or where a purchaser intends to convert

Class 2 or 3 land from agricultural use to recreational land, the transaction would normally be denied unless the applicant can meet a heavy onus of establishing one or more reasons why an exception should be made. The thrust of applying the *Lands Protection Act* should be, in essence, one of putting a strong onus on the applicant as to why their case should be an exceptional one.

In addition to the meaningful enforcement of the existing provisions of the *Lands Protection Act* by a more judicious exercise of the discretionay role accorded the Lieutenant-Governor-in-Council, we are of the view that public accountability in respect to this exercise should be provided by way of an annual reporting to the Legislative Assembly. This reporting should provide both collective data on non-resident land ownership, including shore frontage quantum, and the individual transactions for which consent has been given with reasons for granting approval.

We would expect widespread knowledge that approval is tough to obtain will result in fewer applications, many of which may be approved because they can meet the exceptional criteria.

At the present time it would appear that the province has no land policy with respect to non-resident lease or sale of Crown lands, including property owned by such agencies as the Agricultural Development Corporation. A number of provinces have policies or legislation that control or prevent such transactions. The province must adopt a land policy in this regard and we would recommend one that permits such transactions only when they are in the public interest. We would suggest it is in the public interest to lease Crown land to non-residents who are planning to take up residency in the province in the immediate future (with the proviso that the lease is terminated if the expected residency does not occur) if the land is to be used for agricultural purposes. A sale of Crown lands to encourage new farmers might also be in the public interest, again on the proviso that the sale is conditional on residency. To safeguard the public interest, the province should include within its land policy provisions for such mechanisms as a right of first refusal exercisable by the Crown at a fixed price and within a prescribed time if the residency does not materialize or ceases in a short period of time. We do not see the public interest being served by the lease or sale of Crown land to non-residents who do not intend to assume residency except under most unusual circumstances and/or where there are very small parcels of land (such as small strips of Crown land that may accrue when a roadway is altered and the only property owner that can benefit from the surplus land is the adjacent owner).

The *Lands Protection Act* places a limit on the amount of land that may be owned by anyone in the province, whether resident or non-resident. There is no provision that calls for a divestment of land where a resident holding lands in excess of 5 acres leaves the province to assume residency elsewhere. We consider this somewhat of a "loophole" in that it allows a non-resident to live in the province for 183 days, acquire 1,000 acres of land without going through the "consent" provisions, and then leave the province. Other provinces which have enacted limits on the amount of farmland that may be owned by non-residents, have included divestment provisions. Where this has occurred, both the legislation and publications issued by the government have made it very clear that the provisions are not intended to require long-term residents who are now retired to rid themselves of their landholdings, even though they have temporary, seasonal or permanent residence elsewhere. Rather, the measures have been put in place as a safeguard to prevent abuses. We would recommend that the *Lands Protection Act* be amended in a similar fashion.

In taking the position we have on this issue, we are of the view that it is time to stop regarding "non-residents" as "former residents". It may still be true that many non-residents can make that claim while many others have kinship ties with residents. However, we have heard a sufficient number of versions on this theme to be convinced that many of these ties have now become fairly frail, either in time or degrees of kinship. So remote were some of the ties explained to us (often by residents who took pains to explain to us that they came to the Island from elsewhere many years ago) it became refreshing to hear from anyone who said they took up residency only because they visited and liked the province, not because their grandmother's second husband spent a week with his aunt and uncle on the Island sixty years ago! We view the role of the Crown in the province as one of supporting residents of the province and its priorities must be directed towards them, not towards former residents and their dreams.

At the same time, our position has meant we have taken sides in the dispute between the owner's right to sell land in an unfettered marketplace versus a policy that may keep land prices essentially within the boundaries of a lower price range. In so doing, we have considered a number of factors. There are sound policy reasons for not adopting land policies that will cause land to be worth more as vacant recreational land than it is worth as agricultural or woodland. The province needs to encourage young people to get into agriculture. The farming sector needs to keep its cost of production as low as possible to compete in a world market that encompasses GATT and Free Trade with farm subsidies under fire. The province has no new farmer program. On the woodlands side, it is obvious from our consideration of "Trees" that the province is involved in a complex program involving considerable public dollars to enhance the quality of our woodland. Its policy objectives can be best accomplished if woodland prices are not competing with a recreational-use marketplace driven by escalating land prices based on out-of-province buyers.

Controls on out-of-province residents in their purchase of land will impinge upon retiring farmers who see the sale of their lands as their retirement fund. But, we suspect, the big windfalls are more often dreams, not reality, for many of them. When land is being sold at $50,000 (U.S) per acre, that is not money in the farmer's pocket. The original owner who has spent a working lifetime caring for the land *may* have been paid more than he could hope to get from his neighbour down the road. But, we question his innermost thoughts as he surveys his bank account, knowing that the real windfall from his land did not accrue to his pocketbook at all.

The second set of factors we took into account in determining our position related to the relative positions of the young person entering the business world, whether in farming or some other venue, versus the landowner on the verge of retirement. Home-ownership has always been a cornerstone of the Island lifestyle and this has been realized by a high proportion of Islanders, in spite of low wage levels, because of land availability at an affordable price. Public assistance, whether for the young farmer or the couple starting out to acquire their first home, is slight. In contrast, the retiring landowner has a number of safety nets, in addition to the retirement fund represented by landownership. Those who are retiring are assisted by a number of social benefit programs, both at the federal and provincial levels. Indeed, in one of the anamolies of the system, the retiring landowner can have an unrestricted amount of capital tied up in land but, in the absence of any cash income, the landowner of pensionable age is entitled to the federal Guaranteed Income Supplement, which supposedly augments a universal pension scheme only for the benefit of low income retirees.

During our public hearings, it was obvious the general public and, in particular, the agricultural community were reluctant to take a position in this debate. They supported low farmland prices for young farmers and for those wishing to expand their operations. Simultaneously, they urged an unfettered right for the retiring owner to attain the best sale price for his land. All recognized they were "sitting on the fence" in supporting irreconcilable objectives, particularly in the face of their demand for other controls in the marketplace. We are of the view that it is necessary and in the public interest to take a position, however unpopular it may be, if the province is ever going to adopt a sound and meaningful set of land policies that take into account the pressures generated on the marketplace by such outside forces as the non-resident quest for recreational land.

Accordingly, we recommend

- **THAT the Lieutenant-Governor-in-Council alter its current policy with respect to the perfunctory exercise of its discretion towards excess land purchases by non-residents pursuant to the *Lands Protection Act* to one of granting permission only in pre-determined or most exceptional circumstances.**
- **THAT the *Lands Protection Act* be amended to require the Lieutenant-Governor-in-Council to table annually in the Legislative Assembly the amount of land owned in the province by non-residents, the amount of shore frontage owned by non-residents, the transactions to which it has given consent pursuant to the *Lands Protection Act* and the reason(s) why consent was given in each instance.**
- **THAT the *Lands Protection Act* be amended so that the Lieutenant-Governor-in-Council has the power to issue divestment orders in respect of any aggregate landholdings in excess of five acres or 165 feet of shore frontage where the property was acquired during a short period of residency but the owner can no longer meet the residency criteria in the *Act*.**
- **THAT the province adopt a land policy in respect to the leasing or sale of Crown lands to non-residents that would permit such transactions only when they are in the public interest.**
- **THAT the Land Use Commission commence the active monitoring and enforcement of covenants included in land identification agreements.**

- **THAT the Department of Finance proceed with implementing a Geographic Information System with a data base that would enable it to effectively monitor and analyze patterns of land ownership and land use, together with other variables.**
- **THAT as soon as the GIS is available, the province undertake a study on non-resident land ownership in conjunction with recommended studies on vacant farmland and seasonal residences, taking into account soil, water and other conservation issues and data.**
- **THAT, upon the completion of the GIS-based studies of non-resident ownership, the province determine whether it is in the public interest to restrict further or otherwise alter the existing provisions of the *Lands Protection Act* in relation to non-resident ownership of land in the province.**

Chapter 13

OFF-SHORE ISLANDS

While several Canadian provinces are richly endowed with numerous islands, Prince Edward Island has only a few off-shore islands within its jurisdiction. Some of these parcels of land continue to be known nominally as "islands", but their land linkages with the rest of the Province have removed them from effective consideration as off-shore islands: Lennox Island, Panmure Island and Rustico (or Robinson's) Island would be in this category. The remainder are not as easy to enumerate as might be expected for a comparison of several maps shows some variability in names and, on occasion, the perimeters of the islands themselves; this latter difficulty, we suspect, stems from the fact that some of the off-shore islands are little more than sand bars which unite or divide with the whims of the surrounding seas over time.

There has been intermittent interest in the off-shore islands over the past two decades. This interest has emanated from two main sources: biologists and other naturalists who have examined the islands from the standpoint of the natural flora and fauna and land speculators who have perceived some of the islands as a rich source of windfall profits if they can be marketed successfully to wealthy recreational users who want isolated seasonal retreats.

The biological interest in off-shore islands can be traced to the International Biological Programme (IBP), "a programme adopted by 58 nations to study the biological productivity of the earth and relate this to human adaptability and welfare." As part of this, the Conservation of Terrestrial Communities Section (CT) was "an international effort to preserve samples of the world's ecosystems for present and future biological research, as datum points by which to measure manmade changes in ecosystems, and for educational and demonstration purposes." Canadian participation in IBP-CT included a study of 291 sites in the Maritime region, of which 110 were recommended for consideration as ecological reserves with protected status. The recommendations, made in 1974, included 14 sites in Prince Edward Island; among these were Hog Island and the Murray Islands.

In this report, Hog Island was identified as an ecosystem of barrier sand dunes and wetlands, encompassing 3,625 acres. It was described further as "[a] chain of sand dunes, extending from Cascumpeque to Malpeque Bays, and a wooded peninsula. The dune vegetation is dominated by beach grass *Ammophila breviligulata,* bayberry *Myrica pensylvanica,* bearberry *Arctostaphylos uva-ursi,* willow *Salix discolor* and white spruce *Picea glauca*. There is an area of *Spartina pectinata-Juncus balticus* salt marsh and a number of small islands and sand bars. This area is relatively undisturbed." The IBP-CT named it as an ecological reserve of special interest because it was "a good example of typical sand dune and salt marsh ecosystems [and] a locality for *Amelanchier lucida*."

A second site, recommended as an ecological reserve in this study, was that of the Murray Islands, found in the Murray Harbour and consisting of some 240 acres. These islands were described as "[f]ive small islands, sheltered by a sandspit, on the mouth of the

Murray River. Sandbars connect three of the islands, except at high tide. Other sandbars protrude into the harbour. The islands have been inhabited and cultivated, but are presently little disturbed and support large nesting populations of Red-breasted Mergansers, Great Blackbacked Gulls, Herring Gulls and Terns. These populations are very sensitive to disturbance." The biologists felt the Murray Islands should be designated as an ecological reserve because they were an important bird-nesting site.

A more localized and detailed review of these and other sites followed in 1977 when an "offshore Islands Study" was prepared for the Province of Prince Edward Island by the Provincial Planning Division of the Land Use Service Centre.

The background for this study, as explained at p. 3, indicated that biological interest in the off-shore islands had been augmented by speculation and/or developmental interests.

> Concern has been growing for some time over the future of Prince Edward Island's offshore islands. Many of these islands possess extremely fragile ecosystems and constitute areas of irreplaceable natural significance requiring careful management and protection.
>
> The provincial government has been attempting to protect specific islands for several years. Both the Land Use Commission and the Fish and Wildlife Branch of the Department of the Environment have objected strongly to development proposals on certain islands. Cherry Island in the Murray Island group has been purchased outright and attempts have been made to purchase Oultons Island. In addition, Executive Council has designated Bunbury and Little Courtin Islands as "Special Planning Areas" under the Planning Act in order to assure protection of the bird colonies in the area.
>
> Recent development proposals for several of the larger islands have greatly increased the concern over the future of these islands and have made the provincial government increasingly aware of the need for immediate action. This report and the recommendations contained within it are a response to that need.

The 1977 Offshore Islands Study provided an inventory of these islands and then collected and analyzed data on each island with specific recommendations relating to each one. Obviously it was hoped that the study would produce firm policy on the future protection on development of the various islands, for the final report stated: "[t]his initial study should equip the provincial government with sufficient information to offer direction to persons proposing to develop any of the islands in the immediate future, whether for forestry, agriculture or recreation. Further detailed studies will be performed on these islands which this study indicates may have high natural significance and are in need of protection. The goal would be to develop management plans for each of these."

Such optimism was misplaced, as successive governments in the ensuing years failed to adopt little more than a policy of postponed waffling with respect to the off-shore islands. The "Report to Executive Council on Natural Areas", prepared by the Land Use Commission in 1980, expressed considerable frustration with government's failure to develop land policies with respect to natural areas, including the off-shore islands. Among its list of examples to illustrate what it termed "a history of indecision, lack of coordination, and absence of policy", were two that impinged directly on specific off-shore islands. "An attempt to secure Oulton's Island by the provincial government failed when the Department of Finance increased the assessed market value of the island while the Land Development Corporation was attempting to buy it. Government was then unwilling to purchase the property at the higher value", wrote the Land Use Commission. A second difficulty, indicated in this report, arose because "within recent years the Department of Finance has begun to tax properties in the Cascumpeque and Conway Sand Hills, thus confirming them as private properties, although there is little evidence that any clear titles exist for these properties."

The Land Use Commission of the day warned that a proposed 199-lot cottage subdivision proposal for Oulton's Island posed a threat to natural areas. In particular, the subdivision would result in severe damage to the Cascumpeque Sand Hills. The 1980 Report to the Executive Council noted that "[o]ff-shore island offer a great attraction to developers". An immediate indicator of not only this attraction but also the province's indecision and absence of policy was the statement in the L.U.C. report that: "[a]t present there are 3 non-resident and corporate purchases on off-shore islands being held up because Executive Council has no policy."

The Land Use Commission also considered the worth of the natural areas by looking at the market value of the off-shore islands as determined by the Land Valuation Branch and its 1980 report included this table:

	Acreage	Assessed Market Value
Bird Island	200	$ 60,000
Boughton Island	515	135,700
Bunbury Island	257	64,900
Cascumpeque Sand Hills	302	77,000
Conway Sand Hills	1675	181,300
Governor's Island	64	32,000
Grover Island	49	19,500
Hebron Island	85	8,500
Holman's Island	130	39,000
Little Bunbury Island	30	8,600
Murray Harbour Islands	176	87,500
Oulton's Island	186	94,400
St. Peter's Island	349	97,000

(List does not include Lennox, George, Fish and Billhook Islands, all owned by the Federal Government)

It is interesting to note that the assessed market value for these islands totalled $905,400 in 1980. Government indecision subsequently resulted in hearings before the Land Use Commission on Boughton Island where, we would suggest, the hearing costs could well be in excess of the 1980 assessed market value for this parcel of land!

Prior to our appointment as a Royal Commission, it would appear that the only one of the off-shore island subjected to any regulatory provisions was Bunbury (or Courtin) Island. Soon after our appointment as a Royal Commission, Off-Shore Islands Regulations were implemented by Order-in-Council No. EC123/89, dated February 23, 1989. These Off-Shore Islands Regulations provide as follows:

1. In these regulations

   (a) "off-shore island" means any of the following islands:

      (i) Glenfinnan Island
      (ii) Governors Island
      (iii) St. Peters Island
      (iv) Holman Island
      (v) Murray Islands:

         A) Reynolds Island
         B) Herring Island
         C) Cherry Island
         D) Thomas Island
         E) Gordons Island

      (vi) Boughton Island
      (vii) Grover (Ram) Island
      (viii) Little Courtin Island
      (ix) Bunbury Island
      (x) Bird Island
      (xi) Oultons Island
      (xii) Cascumpec Sand Hills
      (xiii) Conway Sand Hills
      (xiv) Hog Island Sand Hills
      (xv) George Island

   (b) "sand dune" has the same meaning as in the *Environmental Protection Act*, R.S.P.E.I. 1974, Cap. E-8.2;

   (c) "summer cottage" has the same meaning as in the Planning Act Regulations (EC601/77);

   (d) "wildlife" has the same meaning as in the *Fish and Game Protection Act*, R.S.P.E.I. 1974, Cap. F-8.

2. Upon or within any off-shore island no person shall

   (a) sever or divide a parcel of land by means of a plan of subdivision, plan of survey, agreement, deed, or any instrument, including a caveat, transferring or creating an interest in part of the parcel;

   (b) construct, erect, or locate a building or structure on a sand dune or sand dune system or wildlife habitat;

   (c) construct, erect, or locate a building or structure other than a single unit private residence summer cottage having its own water supply and sewage disposal system constructed in accordance with the requirements of the *Environmental Protection Act*, R.S.P.E.I. 1974, Cap. E-8.2.

3. These regulations come into force on March 4, 1989.

The Boughton Island case is still sufficiently "active" at the time of our deliberations that we do not wish to single it out for commentary. Nor do we wish to comment specifically on Oulton's Island, in spite of recent press commentary claiming advertisements for recreational properties at this locale had been spotted in the *Wall Street Journal* in 1989. Instead, we wish to discuss development on the off-shore islands in general.

Several of the presentations before us stressed the need to preserve natural areas and the off-shore islands were mentioned frequently as among those areas that should be preserved for biological reasons and/or as part of a wilderness conservation package. While there are sound reasons for the preservation of the off-shore islands in their present natural essentially uninhabited state - and they are reasons with which we agree - we have examined the question of development or preservation from an economic standpoint.

From this perspective, the 1977 offshore islands study identified five "general development limitations". This discussion is worth reconsidering, so we shall cite what the study had to say:

> **4. GENERAL DEVELOPMENT LIMITATIONS**
>
> The inventory will, among other things, identify development potentials and problems for each island. There are, however, a number of overall constraints to development which should be identified at the outset, in order to set "island development" in a proper perspective. A brief summary of some of these should serve to demonstrate the extent of the problem (a detailed report including cost estimates is included in Appendix "B").
>
> **a) Construction Costs**
>
> Costs of well drilling, road construction, septic tank installation and general construction are all much higher on the islands than on the mainland. Quite obviously, any men and equipment needed must be transported from the mainland. In the case of earthmoving and drilling equipment, this is expensive and difficult. As the distance from the mainland increases so do the direct and indirect costs of development.
>
> **b) Fire Protection**
>
> Providing fire protection from the mainland is difficult if not impossible for all of the islands. Any fire protection service must reasonably be supplied on the island itself. This would likely be prohibitive in terms of costs for most of the islands studied. Without adequate fire protection, insurance would be either impossible to obtain or extremely expensive.
>
> **c) Electric Installation**
>
> Anyone wishing electric service on an offshore island should study the figures suggested in Appendix "B". The cost of running a cable to any of the islands is likely prohibitive for any type of development. The cost of generating electricity by using diesel motors would also be high and is extremely inefficient. It would appear that alternate energy systems offer the only reasonable solution to energy needs on the islands but as yet the capital costs of such systems are still quite high.

d) Insects

Many of the islands studied have problems with insect infestations. This would no doubt lower their market potential for cottage development or day use. The only answer to this problem appears to be spraying, draining or marsh areas and selective forest clearing. These procedures would likely be highly detrimental to wildlife and to the quality of the surrounding environment and thus would be strongly protested by concerned government departments and agencies and environmental groups. There would also be considerable damage to many of the qualities which might attract people to the islands in the first place.

e) Water Supply

The cost of drilling wells on the islands has already been discussed. In addition, however, there is a high probability of salt water intrusion on most of the islands. The necessity of well casing where potential for salt water intrusion exists raises the costs even higher.

In many cases a centralized water supply and distribution system would be mandatory before an intensive development would be allowed. This again would raise costs.

It would appear that many of the off-shore islands are not conducive to development, particularly not residential development.

However, our research has discovered there is an insatiable interest in waterfront property at the present time in the United States. Coupled with this is a long-standing interest in islands, with purchasers wanting to acquire their very own little isolated kingdom. The off-shore islands present a great potential for this market.

Equally, those islands which are not suitable for development present an enticement for a land scandal. Many of the off-shore islands are just the type of property that can bring the real estate market for the whole Province into disrepute.

Even where the off-shore islands present possibilities for residential development we have concerns of an economic nature. The off-shore islands are lacking almost totally in any type of infrastructure that is, today, held to be "necessary" by most citizens. Who will build this infrastructure?

It is all very well and good to suggest that the landowners themselves will bear these costs and that such costs will be modified as the islands would only be used for seasonal residences. But our findings with respect to other types of residential properties do not bear out this wishful thinking. First generation owners of rural, non-farm properties, for example, have been happy to co-exist with agricultural practices nearby; successive owners do not always exhibit the same tolerance.

Would seasonal owners always remain just that? Or would they, on occasion, lease out their property in the off-season for added security and extra revenue? Would they decide to enjoy their isolated retreat themselves on a year-round basis? Who, then, bears the cost of transporting their children to school? Who will be called upon to provide fresh water if wells prove inadequate in time? Will fire protection be the responsibility solely of the off-shore residents after the first disastrous fire? Will the public purse be called upon to transport public officials to the off-shore islands for inspecting the installation of wells and sewage disposal systems? Will Island customers of Maritime Electric and Island Telephone be subsidizing the higher cost of bringing utilities to seasonal residents on the off-shore islands?

It is very enticing to suggest the off-shore islands would be merely seasonal enclaves of the wealthy. Whether or not that is a good idea from a social standpoint is a question we set aside - but there is no guarantee the wealthy stay wealthy. Regardless of what policies might be put in place now to ensure development costs are not at public expense, we feel the only certain guarantee of this is to prevent development from the outset.

Is there any real clamour for development of the off-shore islands? We find there is not. Any "demand" is not a local demand. It is a demand that is being artificially stimulated, generated by glossy magazine ads, inviting potential buyers (many of whom have likely not heard of Prince Edward Island prior to being targeted by modern merchandising techniques) to pay a selling price that few Island residents familiar with the existing local market would find within the realm of reason.

The principal beneficiary - perhaps the sole beneficiary of off-shore island sales is any vendor who can tap the leisure home market among purchasers who are unaware of existing local prices.

Who are the losers in this real estate game? Aside from the potential purchasers, we see the residents of the Province and the taxpayers as being the key losers.

Development of the off-shore islands entail not only a loss of potential natural areas for residents and their children, they represent a great potential price tag if development proceeds.

Some of the off-shore islands have been inhabited in the past. This has led to the argument that the islands are suitable for residential purposes now. We do not agree with this line of reasoning. At the time when off-shore islands were inhabited in the past, citizens had a self-sufficiency and self-reliance seldom found today. Residents were content to live without electricity, paved roads, ready access to schools and hospitals. They had a more respectful attitude towards nature, an awareness of the fatal dangers presented by the sea and by winter storms. They did not require government approval for their land parcels nor did they look to government for solutions. Today, we submit, government approval of a subdivision or the issuance of a building permit implies that purchasers have certain protections and rights; this may be a false perception but government should cease to be a party to fostering this illusion. The lack of self-sufficiency should render development of the off-shore islands untenable now.

Development of the off-shore islands is "premature development". For that reason alone, the policy with respect to off-shore islands should be a firm, immediate and unequivocal rejection of *any* residential development, seasonal or otherwise, on the off-shore islands.

There are additional reasons why we feel development of the off-shore island to be unwise.

During our public hearings, we had an excellent presentation from Col. Patrick Wootton, a seasonal resident of one of the offshore islands. Col. Wootton indicated he had a great personal interest in nature and advocated that development on the offshore islands should be restricted. However, he felt that a small number of owners on each island would enhance security, ensuring that the islands and their wildlife are protected from vandalism. Col. Wootton is an unusual individual, apparently quite self-sufficient in his lifestyle and quite anxious to protect his natural environment. If there were assurances that development of the off-shore islands rested in owners like Col. Wootton, we would be prepared to accept this solution.

But we cannot be assured of the interests of property owners if seasonal residency is allowed to progress. Unfortunately, successive owners of off-shore islands could prove to have vastly different interests. The off-shore islands can prove to be just as tempting as a basis for smuggling activities as they now are for naturalists.

The off-shore islands in a natural state can provide excellent economic development in the tourism sector. We understand that this market has already been tapped in a small way in the Murray Harbour area where boat tours for seal watchers are being offered in the general area of the Murray Islands. Other offshore islands are well placed to provide either excursions by boat or guided land tours or a combination of both for naturalists, bird-watchers and photographers.

For all these reasons, we recommend

- **THAT a comprehensive land use plan include a firm, consistent policy with respect to the off-shore islands.**
- **THAT this policy prohibit any further development on any of the off-shore islands.**
- **THAT this policy include protection for wildlife and other natural features of the islands.**

Chapter 14

COASTAL ZONE

The 1973 Royal Commission on Land Ownership and Land Use considered the subject of the coastal zone in a section entitled "The Coastal Land Use Plan". At pp. 57 - 61, the Report stated:

> *THE NEED*
>
> The quality of Island shorelines in terms of capability for outdoor recreation is unusually high. Of the total 688 miles of more exposed salt water shorelines, as much as 75 per cent falls within Canada Land Inventory capability Classes 1, 2 and 3, having an exceptionally high capability for family bathing and beach activities. Some 241 miles of this prime recreational shoreline falls within Classes 1 and 2 representing more than one-half (57%) of all such coastlines in the Maritime provinces. Since Canada contains very little warm salt water shoreline outside the Maritime area, Island beaches represent a truly important *national resource.*
>
> The dwindling supply of shoreline accessible to the public has become a matter of continental concern. Measures to preserve public shoreline space and access, and to raise the standards of private shoreline development have already been set in motion in several Canadian provinces (e.g. British Columbia, Manitoba and Ontario) and in many of the U.S. coastal states. Inevitably as controls are strengthened elsewhere, so will the pressures intensify on Island shorelines.
>
> At the end of 1972, non-residents already owned more than 100 miles or nearly 10% of the Island's 1,141 mile coastline (including tidal estuaries), with a disproportionate percentage fronting on high quality sand beaches. Also, the rate of shoreline summer cottage lot subdivision, largely by Island landowners, has reached alarming proportions.
>
> As a result of both these pressures the access of the general public to shoreline has become an increasingly nettlesome problem. At every public hearing of the Commission it was suggested that the right of public access should be reasserted over former 'mud roads' and other forgotten public rights of way to the shore. The Commission feels that access to ocean shoreline is the right of all Canadians. It not only concurs with the public's suggestion but feels that still other beach access points may have to be opened in areas where they are needed most. In cases where *roads* are opened, they should be combined with back-up parking areas within reasonable walking range, and provision made for periodic clean-up and inspection.
>
> *PREPARATION*
>
> The unique value of Island shoreline both to the province and to the nation, dictates an urgent necessity for the preparation of a coastal land use plan. This plan should include all shorelands touched by tidal waters, and within a coastal strip of at least one-half mile in depth and up to one mile in depth in special cases. The plan should designate, possibly at the 1":50,000 foot scale:
>
> (1) areas for public beaches, preservation of unique and fragile lands, wildlife habitat;

(2) areas of present and possible land subdivision for seasonal or year-round homes;

(3) points of public access to the shore;

(4) areas which should be retained in their present or natural state.

If at all possible, this plan should be completed within the next six months. To delay on grounds of inadequate information would be to delay indefinitely.

Since the imposition of such a plan is not likely to be entirely popular with the general public, it is important to provide an opportunity for its review and revision at the local community level. This should most logically happen within the context of local citizen participation in the preparation of more detailed community land use plans.

OTHER COASTAL LAND USE CONSIDERATIONS

Research

The fragility of Island shorelines in the face of ongoing erosion by wave and wind, means that their management must be particularly sensitive to natural processes. Much more needs to be known, and quickly, about the morphological and ecological processes at play in this coastal environment if it is to receive the intelligent management which it deserves in the face of continued sand removal and rapidly increasing recreational use pressures. This subject also presents itself as a logical candidate for further federal involvement and support.

Sand Removal

Although permits are required for the commercial removal of Island beach sands, the process is very difficult to monitor, and little is really known about its long term implications. The movement of sand by longshore currents along Island shorelines is far from completely understood. Since the Commission has been assured that sand of superior quality for concrete and asphalt can be imported by rail from the Wentworth Valley at comparable end cost, it seems unnecessarily risky to continue the commercial mining of Island beaches, at least until such time as further research can be brought to bear on the matter.

Cottage Lot Subdivision

In planning shorelines for recreational uses there must be a scale of priorities with respect to public requirements. The privateness and low utilization of the summer cottages which accommodate very few people in relation to the amount of shorefront which they consume, place them well down on the priority scale, especially in view of the sizeable areas of undeveloped subdivisions which have already removed significant acreages from any use whatever. Further, if it is in the Island's interest to allow the sale of cottage lots to non-residents, then it must also be important to ensure that cottages are actually erected. While 3,870 cottage lots were approved during 1968-71, only 569 building permits were issued. Quite aside from the aesthetic considerations of landscape and the increased expense of servicing scattered cottages, the returns from bare lots in labour and taxes are slim indeed.

> There is also a real need for improved site design regulations. The rate of erosion on Island shorelines suggests a liberal setback from the bank, say 200 feet, provided by the subdivider for his constituents. This would preserve access to the beach for all cottagers and provide space for picnicking and other recreational pursuits. It would also allow for the development of cottage lots in depth, yielding greater return to the developer while conserving the limited shore frontage available.
>
> Further, there are legal and administrative requirements to insure the clarity and security of land transactions. These should include the pinning of lots, the payment of taxes, and possibly the preparation of staging plans and the posting of performance bonds by the subdivider before registering.
>
> Still further, there is the consideration of improved standards for sewage and waste disposal, roads and other services, and the establishment of formulas to cover initial installation costs and long term maintenance.
>
> *Provincial Park Design*
>
> Because of overcrowding in provincial campgrounds, and the parallel problem of beach access, the Commissioners feel that future provincial parks should keep trailers and campgrounds well back from the shore, leaving areas adjacent to the beach free for the day-use activities of both tourists and resident Islanders. Perhaps the Province should leave future expansion in camping facilities to the private sector.
>
> Consideration should also be given to the provision in inland areas of public walking and cross country ski and snowmobile trails together with simple shelters and facilities, to provide an outlet for new recreational pursuits and to ease the pressures at the beach.

Arising out of this discussion on the coastal zone, the Royal Commission of 1973 formulated three recommendations in the following terms:

> The Province should designate without delay those public beaches, unique and fragile lands, and special wildlife habitats which it plans to acquire and/or preserve in the long term. Further, it should err on the side of designating too much rather than too little in each of these categories.
>
> Additional access points must be opened and/or reopened to the beach. Where access *roads* are opened, they should be combined with nearby back-up parking area, and provision made for periodic clean-up and inspection.
>
> Before the spring of 1974, a coastal land use plan must be prepared by the Department of Environment and Tourism for a coastal strip of at least one-half mile in depth, and up to one mile in depth in special cases, along the entire Island shoreline touched by tidal waters. This plan should designate:
>
> (a) areas for public beaches and for the preservation of unique and fragile lands and wildlife habitat;
>
> (b) areas of present and possible land subdivision;
>
> (c) points of public access to the shore, both present and proposed;

(d) areas which should be retained in their present or natural state.

There has been much discussion - and some minimal activity in relation to the coastal zone ever since.

In 1977, as part of Canada's participation in the United Nations Water Conference held at Mar del Plata, Argentina, the Environmental Policy Advisor for the Prince Edward Island Department of Environment, Stanley E. Vass, prepared a paper that was eventually published under the title: "The Coastal Zone: A Challenge in Resources Management". In the introductory portion of this paper, Mr. Vass identifies difficulties in regard to coastal zone management with the following passage from pp. 1-3:

> The world's coastal zones comprise highly productive ecosystems of great complexity that are still more exploited than managed. The basis for their management has changed little since its empirical founding in earlier times, the salient change being the application of highly effective harvesting techniques without understanding their ecological consequences. Also, where more comprehensive management is being applied it too often involves a bureaucratic procedure whose effectiveness, as evidenced by present circumstances of the resource, is less than we might reasonably expect.
>
> Water resources are part of the wider spectrum of natural resources whose management is one of the major issues of modern society; and the coastal zone, while one of its more complex components, for purposes of this discussion represents that broader issue. Management of the coastal zone, however, differs from that of other water resources where, because of priorities and long-sustained effort, there have evolved more coordinated and effective institutional arrangements for decision making. This is evidenced in Canada by the several comprehensive river basin developments of recent years and the degree of our response to the crisis of eutrophication in the Great Lakes.
>
> In contrast, *the coastal zone as an entity is not publicly perceived as an object for management, nor is it so for those federal and provincial departments having some competence for dealing with it; and as a consequence it has yet to receive political recognition. Instead research, resource allocation and management are highly fractionated under a dichotomy of interests.* On the one hand is the interest of industrial exploitation rationalized in terms of resource needs, the alleviation of regional economic disparity and seeming natural abundance; while on the other are many activities, including aspects of fisheries, that are motivated by concerns for conservation and environmental quality. [Emphasis added.]
>
> This paper examines coastal zone management against a backdrop of society's apprehensions over the economic, environmental and social issues of the times. By comparing the need for management with the institutions and procedures for management decisions we hope to make the first of two mainpoints. It is that before we can exercise more responsible and effective management of the coastal zone we must first improve our means for handling information and making decisions. [Emphasis original.]
>
> Our second point devolves from the nature of the coastal zone. The rich and varied resources of coastal ecosystems are created and sustained through the interaction of complex physical and biological processes. What has so far passed for management

> there (to over-simplify) has been the manipulation of individual derived resources with scant recognition of their interaction. Even more serious, we either do not understand the limits within which their underlying processes operate, or where something of this is known we have not seriously applied the knowledge as a basis for management.
>
> It therefore seems probable that to persist in manipulating coastal resources blindly is to court substantial and perhaps irreversible change to the system of processes that sustains them. Our second point, then, is to emphasize the need for a more fundamental, comprehensive approach to resources management and to accelerate research therein. [Emphasis original.]

Mr. Vass identified the changes in the province that produced a need for coastal zone management when he wrote, at page 16:

> Initially, the Maritimes experienced rapid development, particularly in its coastal zone, but expectations were steadily foreclosed largely through the continuing and controlling development of the Great Lakes' basin. Its fortunes have lately improved through development, federal aid programs and its re-discovery by an affluent hinterland society in search of recreational activities.
>
> The basis for this latter was abundant open space, low cost land and high environmental quality. It was a case of region *so far behind in material advantages suddenly becoming so far ahead in those intangible qualities lost elsewhere through overdevelopment; and the greatest of those was a comparatively unspoiled coastal zone and the fascination of the water's edge.*
>
> The rapid growth of the recreation industry is focusing attention on the coastal zone and, through conflicts with traditional pursuits, emphasizing the problems of other coastal resources. Especially vexing are questions of non-resident ownership, speculation in land and urbanization. Of much general concern is how to improve troubled agriculture and fisheries, guide urban and industrial growth and provide the infrastructure of transport, communications and energy. [Emphasis added.]

However, in grappling with these problems, Mr. Vass gave little indication of developing a coastal zone land use plan. His discussion on "Prince Edward Island: Coastal Zone in Miniature" put the solution in the context of the Development Plan, at pp. 21-4:

> In 1969, the province and federal government established a 15-year program for rationalizing better the bases to the Island's economy, a comprehensive program of adjustment and development in virtually all its social and physical resources. This was planned by resource sectors with consideration for their interaction as an economic system but not, to any significant extent, as a natural system.
>
> Work under the plan, especially applied research, was to be mission oriented rather than systematic. There were few requirements that limits to coastal resources management (or of other resource systems) be ascertained in terms of their supporting natural processes. The omission is understandable in view of how imperceptibly our awareness of complexity and resource interaction was then growing, compared with the revelations of today.

Accordingly, it became recognized that the fuller potential of inshore fisheries, aquaculture, marshlands, coastal industry and recreation could not be achieved without better understanding their environmental factors and ecology. Also, without that knowledge the now discernible problems of coastal waters quality, as influenced by land use, cannot be treated satisfactorily.

In 1972-74, therefore, the federal and provincial departments of environment proposed a four-year program aimed at obtaining essential information, examining resources interaction and, through iterative modelling, estimating limits to coastal resources use.

The program was to have integrated with the abovementioned development plan (itself largely funded by DREE) and to have involved water and land resource branches of DOE. Importantly though, most work would have been done by staffs of provincial departments, with feed-back information from research used to adjust management methods and objectives as the program progressed.

Recall now the promise inherent in a closer cooperation of DREE and DOE and the provincial aspiration of its applying federal assistance more directly to resources management.

The proposed coastal zone program was principally approved but set aside because of an uncertain fiscal climate. However, from the experience gained, certain points were identified which could bear on the success of future coastal zone planning.

The Task Force concerned with the Prince Edward Island coastal zone study realized that a major difficulty in preparing comprehensive plans is determining such a mix of authority, institutions and decision making as will best ensure successful implementation. Also, they received three lasting impressions from their work:

1. The complexity and systematic nature of the coastal zone and its problems.
2. The extent to which coastal resources administration, research and management are fractionated.
3. The complicated and relatively inflexible nature of institutional arrangements available for coordinated research and management.

Moreover, they recognized that, while the Prince Edward Island coastal zone is an entity, or system, in many respects, there are important bio-physical linkages with the Gulf of St. Lawrence ecosystem and socioeconomic relationships with the Maritimes, Newfoundland and Southeastern Quebec which must be taken into account. This regional perspective influenced much of their thinking and prompted such notions as the establishment of a regional coastal zone authority as an aid to communication, coordination and decision making generally.

It seemed obvious that to attempt all management of individual coastal zones in isolation would exacerbate the already fractionated character of their research, development and management; and therefore the establishment of a regional coastal zone authority should be seriously considered. Such an institution would serve as a clearing house for information, a broker to help determine priorities and as a delegated authority for coordination. It should have statutory authority from both levels of government and be under the immediate aegis of some variant of the Council of Maritime Premiers.

The area of coastal zone management and its sister component, natural areas (many of which are located in the coastal zone area) illustrate the indecision and the lack of commitment on the part of successive governments to deal with this vitally important issue.

A selective chronology of the reports and documents that have been produced in the last decade indicate vast quantities of trees have died in producing discussions on these subjects but the contents have fallen largely on deaf ears.

A "Report to Executive Council on Natural Areas", prepared by the Land Use Commission and dated May 1, 1980, pointed out that natural areas had been identified through a survey carried out by biologists as part of the International Biological Programme, in which sites worthy of protection were identified throughout the Maritimes in the earlier '70's and through studies carried out by the Natural Areas Advisory Committee, a committee established by the Minister of Tourism in 1975. (As well, there was an offshore island survey carried out by the Land Use Service Centre in 1977, to which reference is made in our discussion of Off-Shore Islands.)

The "Report to Executive Council on Natural Areas" of 1980 listed a number of examples to illustrate what the Land Use Commission termed "a history of indecision, lack of coordination, and absence of policy". Many of these examples also indicate the continued thrust of having endless discussions and study without follow-up action. The catalogue of examples cited by the Land Use Commission read as follows:

> (i) in 1975 a Natural Areas Advisory Committee was formed, to advise the Minister of Tourism. This committee was terminated by a subsequent minister with little to show for its efforts.
>
> (ii) in 1977, an interdepartmental committee, the Coastal Zone Planning Committee, was formed, with part of its mandate being the development of policy for natural areas in the coastal zone. The Committee, although it still may be in existence, is inactive.
>
> (iii) an attempt to secure Oulton's Island by the provincial government failed when the Department of Finance increased the assessed market value of the island while the Land Development Corporation was attempting to buy it. Government was then unwilling to purchase the property at the higher value.
>
> (iv) a non-resident was allowed to purchase choice land at Deroche Pond at a price geared to cottage development, at a time when government was preparing to designate the property for limited development.
>
> (v) within recent years the Department of Finance has begun to tax properties in the Cascumpeque and Conway Sand Hills, thus confirming them as private properties, although there is little evidence that any clear titles exist for these properties.
>
> (vi) at the present time Maritime Resources Management Service is carrying out a review of the provincial park system, including natural areas, with no evidence of any consultation with members of the former Department of Environment.

(vii) there is evidence of continuing dissension among park planners and biologists, inside and outside government, about the proper role of natural areas. Interdepartmental conflict has existed in the past, and will exist in the future, in the absence of policy.

(viii) even where government has attempted to act, there are questions about the results. A recent court case has ruled invalid a designation made under the Recreation Development Act, because the necessary procedures were not followed. This case renders suspect other designations made under this Act.

(ix) *no clear statement about natural areas has been made by Executive Council, despite the fact that the problem has been with us since the early 1970's.* [Emphasis added.]

The Report predicted that "by the turn of the century, many of the natural areas will no longer be natural". The Land Use Commission proposed a series of eight recommendations, several of which had different components, in these terms:

SUMMARY OF RECOMMENDATIONS

1. Executive Council policy -

   Executive Council should state publicly its commitment to the protection of natural areas, and its determination that such areas shall remain in as natural a state as possible, whether under public or private ownership.

2. Establishing priorities -

   Executive Council should commission a survey to establish priorities in terms of acquisition and protection of natural areas.

3. Responsibility for natural areas -

   Executive Council should show its support for the protection of natural areas by:

   (a) providing strong support for the work of the Island Nature Trust

   (b) creating within government a clear focus for dealing with natural areas.

4. Government purchase -

   Executive Council should produce a long-term budget providing sufficient funds such that by the end of the century those natural areas which it is in the public interest to acquire can be acquired. Priorities would be determined by the survey proposed in Recommendation (2).

5. Regulatory approaches -

   (a) Limitation in lot size

   Development in natural areas and surrounding buffer zones should be limited to residential use (permanent or seasonal) with the minimum size of lot being 25 acres.

   (b) Environmental assessment

   No development should be permitted in a natural area without a proper environmental impact assessment. Development would include the clear-cutting of woods and the harvesting of peat-moss.

(c) Securing clear title

No development should be allowed in natural areas unless a clear title to the property can be demonstrated to the department issuing the permit.

(d) Conditions on permits

Regulations pertaining to natural areas should state that the Minister will place on any permit issued in a natural area those conditions necessary for the maintenance of the area in as natural a state as possible. Penalties for non-compliance should be enforced.

(e) Appeals to Land Use Commission

The Department of Community Affairs should publish a notice of approval for any development approved in a natural area, to afford the right of appeal to any concerned citizen or group.

6. Land identification agreements -

Land identification regulations and the Real Property Act should be amended to allow:

(i) 25 or 50 year agreements

(ii) complete tax remission for such agreements

Owners of natural areas should be contacted individually about the possibility of entering into agreements.

7. Contact with landowners -

Executive Council should provide support, without strings attached, to the Island Nature Trust, to contact individual owners of natural areas to encourage the protection of these natural areas.

8. Ecological reserves legislation -

At the next session of the Legislature, government should introduce appropriate ecological reserves legislation.

In October of 1982, the Biology Department of the University of Prince Edward Island published the results of its "Prince Edward Island Natural Areas Survey". The study examined and documented more than fifty sites, many of which were found in the coastal zone, in a total of seven categories (sand dune communities, offshore islands, woodlands, riparian zones, salt marshes, natural ponds and bogs). Sites were given priority ratings. After presentation of its findings on each of the sites, the report contained "Conclusions and Recommendations" at pp. 95-99:

> This Report has considered the major categories of local natural areas and sites presently known. In it is developed a rating system, and the most important areas are priorized in terms of significance. However, we believe that additional, continuing attention needs to be paid to this entire procedure of locating, evaluating and priorizing such areas, since without doubt other candidates will become known, and areas change with time and (unfortunately) disturbance.

Once such information is available, the obvious next step to consider is protection. In most cases, this means protection from development in the area itself, and care in a surrounding buffer zone. This is relatively simple with areas such as offshore islands, perhaps less so with sand dune and woodland communities, and difficult indeed when entire watersheds are considered - it is obvious that development in, for instance, the Tryon River system cannot be prohibited.

A strategy for long-term protection, then, must be a multi-faceted one, and must be sufficiently flexible to cover the differing needs of different areas. We believe that it should contain an educational component, a policy for acquisition by purchase, a legislative basis, and incentives to involve the private landowner in protection. The concept of natural areas and of their values is not widely understood, let alone accepted, on Prince Edward Island. We believe that it is necessary to begin with a serious educational effort, using a variety of media, and directed to all segments of society. In the schools, lesson plans and leaflets should be developed for teachers, and field trips to suitable areas should be encouraged. It is possible that "public service type" television advertisements could be developed; groups such as the Canadian Wildlife Service have been successful in this area. A community school presentation should also be considered. In effect, we believe that *the natural area concept should become a part of the province's environmental education thrust.*

In the case of high-value, threatened areas, probably no attempt at preservation will be successful except acquisition and management by government. This is difficult enough at any time due to the low priority placed upon this by the citizenry, and is particularly difficult during times of financial constraint. However, we see no other permanent solution for areas with high development potential, and thus suggest that funding be obtained (perhaps by the release of other crown-owned lands) and that the areas of highest value be purchased, over the years, as they become available. It is possible that this purchase by the province could be mediated through an agency such as the proposed Provincial Museum of Man & Nature, if the museum becomes a reality.

Such a policy would ensure that lands purchased were properly protected, and did not become part of a provincial parks program. While some parks' activities may be compatible with natural areas; it is important to stress that natural areas are not acquired for recreational value, and in fact may require complete protection from visitors (for instance, a colonialnesting bird area). A properly prepared management plan for each area should specify the amount of human use which could be tolerated without losing the natural values present. As noted above, we believe that government involvement with natural areas requires the establishment of appropriate legislation. Most provinces in Canada now have an Ecological Reserves Act (although there are great differences in activity associated with these Acts). Volume 2 of this Report will survey Canadian legislation and make specific recommendations concerning this topic; however we suggest that Prince Edward Island should establish such an Act.

It is apparent in this province that many important natural areas will remain in private hands; we thus suggest a program of education, and if possible incentives, aimed at these landowners in attempts to promote protection on their properties. To begin, the owners of important sites should be visited and (if agreeable) continuing discussions on the protection of their sites should occur. We suggest that incentives for good management such as tax relief, or a cost-shared contribution where expenditures are necessary, should be considered.

> There remains the vexing question of what to do with sites that are not rated as of highest value. The case can be made that *all* sand dune systems, for instance, require care and protection - yet it is clear that only a few may be purchased and protected under the Ecological Reserves Act. We have no simple solution; we can only suggest that the "conservation ethic" and good land management be promoted whenever possible, and that development be closely scrutinized to ensure that losses are not too great.
>
> In summary, we have outlined a program of education, acquisition, protection under proper legislation, and incentives for private landowners - all aimed at protecting the important natural areas which survive on Prince Edward Island. We thus suggest a continuing process which will obviously be affected by economic factors, one which must contain elements of flexibility and opportunity for communication between interested parties. We believe strongly that this process must begin. [Emphasis added.]

The process has begun, largely, because of the interest and enthusiasm of private sector organizations and the campaigns they have mounted. Led by the Island Nature Trust and the Natural History Society, the Government of Prince Edward Island has followed, slowly and reluctantly.

At the request of Executive Council, the Land Use Commission prepared a set of policy proposals for summer cottage development in 1986. While this document has been considered more extensively in our discussion on "subdivisions", the tenor of its opening paragraphs point to the lack of progress in spite of some attempt to paint a picture of some incremental achievements.

> Over the past fourteen years many initiatives have been taken to encourage proper planning and regulation of land in the coastal zone. These include a Royal Commission on Land Ownership and Land Use, a system of summer cottage subdivision agreement procedures incorporated in the Planning Act Regulations, a North Shore Planning Project, a governmental Coastal Zone Committee and a Ministerial Advisory Committee on Natural Areas.
>
> Despite all these efforts, *not a great deal has changed since Canada Landfund put forward its proposal for a major subdivision at Princetown Royalty in 1972. The situation is still one where almost "anything goes" provided that it complies with minimum lot sizes and other technical requirements of the Planning Act Regulations.*
>
> *In fact, the situation has deteriorated since the mid '70's. Government has shown little concern for orderly development in the coastal zone,* subdivision agreements are no longer required and the issue of beach access and alienation of shorefrontage no longer attracts public attention. [Emphasis added.]

The Land Use Commission used this opportunity to press once more for a land use plan for the coastal zone. This was evident in its commentary at pp. 2-4 of the document and the recommendation it made in this regard.

> The Commission suggests that, given the significance of the coastal zone as a part of the natural heritage of all Islanders and its significance to the tourist industry, a more orderly system of development is needed within the coastal zone. Even though,

> at current rates of subdivision, it may be many decades before most of the province's shorefrontage is alienated, *continuing haphazard development closes off future options, threatens the existence of natural and fragile areas and, where land is subdivided but not built upon, provides only a pittance in tax revenues to the economy of the province.*
>
> LONG TERM POLICY GOALS
>
> The necessity for well-planned summer cottage development is only one of the land use and environmental problems facing the coastal zone. It cannot be considered in isolation from other problems, although, in the Commission's view, some short term action should be taken in relation to this specific issue. *Longer term efforts must be aimed at achieving an orderly growth process for all development within the zone. As recommended by the Royal Commission on Land Ownership and Land Use as long ago as 1972, there is a continuing need for a coastal zone land use plan that would provide for orderly growth in what is the most scenic and most fragile landscape zone in the province.*
>
> *Since 1972 very little progress has been made in land use planning at the provincial level. Most of the coastal zone remains outside the boundaries of municipalities with Official Plans and zoning bylaws. The result has been unplanned development which in its most extreme form is exemplified by a "Coney Island" type commercial strip that has sprung up along the southern border of the National Park at Cavendish.*
>
> New mechanisms for planning at the provincial level, with adequate local input, must be developed. *The provincial government has for too long abdicated its responsibility in this area. Present policy, which is to supply planning assistance only after a local municipality requests it, is inappropriate for the coastal zone.* [Emphasis added.]

The Land Use Commission recommended that "[t]he Department of Community and Cultural Affairs should commence work now on a new planning approach for the coastal zone with the goal of having a plan for orderly development in place by 1991. The plan would consider all forms of development, including summer cottages. It would also provide strong guidance for municipalities in the coastal zone with Official Plans."

In March of 1989, the fifth in a series of drafts on a "coastal zone subdivision policy" was prepared by the Provincial Planning Branch of the Department of Community and Cultural Affairs.

Elsewhere in our report we have considered the importance of agriculture, tourism and forestry to the provincial economy as these relate to land use planning issues. When the coastal zone is considered, the fisheries sector must be brought into focus.

In Prince Edward Island fisheries and aquaculture employs approximately 7200 people - 4800 in fishing and fish culture and 2400 in processing. Many more are employed in industries which support the fishery such as outfitting and vessel construction. From annual total landed values of some $73 million, it is estimated that in excess of $200 million is contributed annually to the P.E.I. economy from the primary and secondary sectors and support industries.

Concerns relating to the fisheries were raised by several of the submissions at our public hearings. These noted that "seascape" is often an integral part of "landscape", and that farming, fishing and tourism are interdependent.

There are two leading aspects of the fishery sector in relation to land use issues: uses of the land that harm the fisheries directly (contamination), and the conflict of uses of the land that indirectly affect the fisheries, such as cottage development along shorelines and on off-shore islands.

While we have considered the matter of soil erosion and degradation in some detail, it is worthwhile emphasizing that estuaries receive everything that comes down the stream. Soil erosion has a double cost - the loss to the farmer in terms of lost productive topsoil and the loss incurred by the fisheries. Shellfish are especially vulnerable to siltation and poor land use management practices are very costly to this industry, as we noted elsewhere.

We understand that the Island fisheries suffer three general forms of water pollution resulting from land use practices bacteriological, pesticide contamination and over-supply of nutrients. In respect to bacteria, there are about 80 areas closed to the direct harvesting of shellfish. This is a costly waste of resources. Shellfish closures mean more than lost employment and income opportunities. There are costs incurred in establishing and policing closures, as well as the expenses for setting up costly depuration plants. The source of bacterial contamination can be traced to land practices such as general land wash and, occasionally, run-off of farm manure. The absolute necessity for good quality water in fish production means that the potential of pesticides contamination is an ongoing concern to the fisheries sector. The oversupply of nutrients results in estuaries suffering from the overproduction of algae. Following the peak of production, the algae bloom "crashes" and the algae decompose. Two results occur which are devastating to the fisheries. The decomposition removes the oxygen from the water, killing fish and shellfish. Remains of the algae contribute to the siltation problem referred to earlier. In 1984, the situation in the West River dramatically illustrated the point. It also shows that it is never too late to apply remedial measures as Nature, given the chance, is remarkable in its ability to repair the damage.

The in-filling of marshes, however, is irreversible. This is of particular concern to the fisheries sector since marshes are a very important link in the food chain for fish.

Conflicts in land uses pose difficulties analogous to those found in agriculture. Fish plants and fish plant odours are an inescapable component of the industry. Fish plants must be recognized to have a legitimate place when appropriately situated. Fishing harbours, an important component of the seascape/landscape, need elbow room for expansion. Other users of the land often overlook this need, and settlements which base their livelihood around fishing and farming can become antagonistic to some of those facts of life.

We understand that access to the shoreline in the context of the shellfish and Irish moss fisheries continue to be a source of conflict with other land users, particularly cottage owners and "developers".

While aquaculture zoning is a federal responsibility, it has provincial support and substantial consultation has occurred in the development of the zoning system. The aquaculture industry is aware of the need to preserve water quality. While there is little evidence, to date, of conflicts between aquaculture and recreational users of Island waters, this has become a contentious issue in a number of other jurisdictions, particularly as water sports grow in popularity.

It would appear that one of the initial difficulties involved in determining a coastal zone policy is a definition of the coastal zone and its characteristics. While the 1973 Royal Commission suggested "a coastal strip of at least one-half mile in depth", the Department of Community and Cultural Affairs has proposed a standard of some 1,500 feet. It's "definition and characteristics" is found in this excerpt from its draft on coastal zone subdivision policy.

> . . . while there is no generally agreed definition of how far back the coastal zone extends in PEI, there are two options for defining it in law. Both are arbitrary. The first approach would be to select certain points or features, such as public roads. Public roads were not, however, developed in recognition of a need to define the coastal zone. The second equally arbitrary approach is to select a specific distance from the coast itself. Although this places it in relation to an eroding and irregular set of features, the high water mark is accepted in law and can be fixed, at least for a particular point in time such as that which would be evident from aerial photographs or maps made from them. This is the approach which is recommended.
>
> The distance inland selected is 1500 feet. This distance ensures that all subdivision activity which is motivated by the desire to be close to the shore itself would be included. Adoption of this definition would bring approximately 200,000 acres of the Province under management.

We are of the view that the coastal zone should not be established by a rigid mathematical formula but on principles of good land use planning that include such natural features as watersheds. While guidelines to determine the zone might well include the use of roads and other apparent boundaries, a minimum/maximum range in regard to the area of the zone (eg. not less than 1,500 or more than 2,500 feet as a general rule) would represent a more rational approach to defining the coastal zone.

The argument about where the coastal zone should lie should cease and a decision should be made so that the many other and more pressing issues involved in coastal zone use and management can be addressed.

Coastal zone land use policies must be applicable on a province-wide basis. Urban municipalities with well-developed areas within the coastal zone should conform with the rules developed for the coastal zone for the province as a whole. The draft "Coastal Zone Subdivision Policy" of 1989 indicated there were 54 coastal municipalities, of which 21 exercised development control by official plans and/or bylaws. However, there is no indication as to whether the special needs of the coastal area has been taken into consideration in any of these plans.

It would appear that the "coastal zone" concept being considered within the Department of Community and Cultural Affairs does not include areas adjacent to rivers and streams. These are areas in need of special protective provisions, many of which involve issues analogous to those inherent in the more narrowly-defined coastal zone.

In particular, there is a need for greenbelts adjacent to rivers and streams.

During our public hearings and elsewhere during the tenure of our inquiry, we heard much about the Morell and Montague River projects. Without depreciating the accomplishments of these two programs, we would like to pay special tribute to Belle River project.

First, allow us to put this matter in context. Many presentations made to us contained suggestions and recommendations for public action which, we suggested, could be accomplished more expeditiously either by the presenters themselves or through their leadership. And, in fact, we have since noted some examples where self-help has prevailed.

In the context of this approach, we were pleasantly surprised by the appearance of the Belle River Environmental Protection Association. The Association came before us, asking for more local control over development and planning in their area. Their formal presentation said nothing about the Belle River project in any way. It was only in the verbal exchange after the presentation that a chance remark led to our learning of this project. It was, in our opinion, a story that best exemplifies what a group of community-minded Islanders can do to solve a problem in a timely and cost-effective manner. The project began after a "kitchen table" meeting where conservation revealed the need to restore the Belle River. Over several years, the local residents did just that and did so largely without government funding. Indeed, after receiving a federal government grant that enabled them to hire summer students, the project had a surplus balance that was (with some difficulty) remitted! We understand the Belle River Environmental Protection Association was beginning to set its sights on the Flat River.

We are of the view the province needs to motivate more community groups and organizations to become involved in selfhelp projects of this type. One suggestion made to us was an "adopt-a-stream" program operated through the school system in Nova Scotia. We have, purposely, avoided any measures that would involved the educational system because, in our view, that avenue has been a traditional favourite mode of proposing change that calls for public education and activity. While an adopt-a-stream program undoubtedly offers valuable learning opportunities for children, much of the work required to enhance the environmental quality of our streams and rivers does require adults to assume the burden of responsibility. This is not to say that children should not be involved but those most directly responsible for the existing degradation must assume a leading role.

Any discussion on a coastal zone in the province must include reference to our beaches and sand dunes, the "national resource" referred to by the 1973 Royal Commission. These natural areas have long been recognized as an essential component in the tourist economy. Both dunes and beaches are acknowledged elements in our landscape - our working landscape - and many of these areas represent special places for all Islanders.

This recognition has led to protective measures for these areas but we are not convinced the province has ever appreciated what this resource means in the overall perspective. There are some indications that enforcement of protective provisions are not as rigorous as they could be. Chief among the complaints levied in this regard at our public hearings was the failure to enforce prohibitions against the use of recreational vehicles in these areas.

We question the application and enforcement of standards in regards to summer cottage locations in these areas. One example of this was particularly shocking to us. In our tour of the province (described in Appendix B of Volume II) we noted, with considerable dismay, an elaborate summer residence *built into the side of a sand dune* not far from Morell. In this cottage subdivision, as in others, there was ample evidence that there is too little attention being paid to the coastal ecological features on which so much of the economy and the natural vitality of the province depends.

That the sand dunes and beaches of the province are neither appreciated nor recognized as they should be is obvious from another perspective. Except for sand mining, capitalization on these natural resources has been exclusively directed to their recreational uses. An interpretative centre/museum on natural history that could contain video display information on the interactions between waves, wind and dunes and the role of the barrier off-shore islands and coastal beaches in absorbing the energy generated by the seas could be a major attraction for tourists. A parallel example is an interpretative centre in the Pacific Rim National Park - which draws tourists more than 100 miles through the uninhabited interior of Vancouver Island and provides a major attraction for travellers visiting the two small communities adjacent to the Park.

Yet another indicator of complacency by the province in relation to these natural resources has been the sorrowful apathy in relation to Greenwich. Expert evidence presented before the Land Use Commission indicated the sand dunes in Greenwich are quite distinctive. Indeed, one expert of international renown testified these dunes were *unique in the world.* That successive governments have ignored a jewel among Island properties is most unfortunate and the province should take steps to return this property to Island control through public ownership. In so doing, the province should be prepared to pay for the property using fair market value in accordance with its appraisal for property tax purposes, but it should not be held to ransom.

One of the difficulties with managing a fragile resource such as the coastal zone (in general) and the sand dunes and beaches (in particular) involves a careful balancing of user level to ensure the resource is not damaged beyond a sustainable level. A simple "solution" is to use fees so that demand can be regulated through a pricing mechanism. Many parks have grappled with this issue, for there is a conflict between the need to keep nature intact and those who see nature as being "free" and resent any measures to charge for its usage. Some compromises have been made so that, for example, access to certain "free areas" are unregulated by the marketplace *per se* but other areas are accessible only by paying high prices. Public use of Greenwich would require mechanisms such as these, but access could be limited by way of guided tours and/or boat tours, combined with the availability of an interpretative centre that displays the features of the area some distance away. There is no reason indeed every advantage - to combining this with the archaeological resources we identified in our discussion on historical preservation.

While we have entitled this section "coastal zone", we would be remiss if we did not mention natural areas, many, but not all, of which do occur within the coastal zone.

Thanks in no small way to the dedicated efforts of such volunteer groups as the Island Nature Trust and the Natural History Society, the preservation and enhancement of natural areas and measures to protect the environment have proceeded at a steady pace. While this progress has not always kept up with the encroachment to and destruction of natural areas, it has made valuable inroads - including an ever-advancing public awareness, understanding and acceptance of the goals involved in their endeavours.

We are confident that, with input from organizations such as these, natural areas will not be overlooked in comprehensive land use planning.

We think it essential, however, to emphasize that a province-wide land use policy must target a proportion of the province for natural preservation. The thrust of private sector efforts, to date, have been aimed at land that comprises perhaps 1% of the province's total area. *Our Common Future: The World Commission on Environment and Development,* otherwise known as The Brundtland Report, recommended that 12% of the land area in any jurisdiction should be designated for preservation as a natural area as a *minimum*. Other sources suggest 15% of the land area is more fitting. This is not to say that such land cannot remain in private ownership. Indeed, in many instances, it will be land that is not suited for development but it is "working landscape" for wildlife and for nature. We would suggest a target in this range must be an integral part of the natural area component of land use plans.

Accordingly, we recommend

- **THAT the province endorse a coastal zone policy applicable to the whole province.**
- **THAT urban municipalities with well-developed areas within the coastal zone should conform with the rules developed for the coastal zone for the province as a whole.**
- **THAT land use planning include water resources such as bays, rivers and streams.**
- **THAT greenbelts for areas adjacent to rivers and streams be included in comprehensive land use plans.**
- **THAT the province encourage community groups, including youth groups, to adopt a stream in their local area.**
- **THAT the province rigorously enforce measures designed to protect beaches and sand dunes, particularly those aimed at preventing vehicular damage.**
- **THAT the province utilize the educational aspects of its beaches and sand dunes through an interpretative centre.**

- **THAT the province ensure the long-term preservation of Greenwich area in its natural state under public ownership.**
- **THAT comprehensive land use plans include areas for natural preservation.**
- **THAT the province continue to encourage and support volunteer groups whose aims and objectives assist in preserving and enhancing natural areas.**

Chapter 15

PLANNING

The pattern of its settlements and the social structures of its earliest communities have had their share of influence on land use planning in the Province. As we noted earlier, the first efforts at municipal incorporation were the incorporation acts creating the City of Charlottetown and the Town of Summerside. These two municipalities have enjoyed a corporate status which is considerably "elevated" from the status enjoyed by the other municipalities, as these centres obtained statutes which empowered the urban populations to elect local governments and laid out the framework under which their local governments could act. There were, of course, other early incorporated settlements as well. Busy towns - Alberton, Souris, Georgetown, Borden, Kensington, Montague - felt the need for local government, which could act for them in matters that the provincial government could not handle adequately. These were typical municipal matters involving a myriad of details. The *Town Act* was created as a solution to the problem and towns were able then to incorporate as municipalities. For the rural areas of the province, the major problem was one of proper structures for learning. Some 450 school districts were created under provincial legislation in response to a need for education and a structure which could fund the schools. Villages also grew, some quite briskly during the heyday of the railroad. This brought a new set of demands involving almost 30 villages, strung out from St. Peters Bay to Tignish. The *Village Services Act* was created eventually in response to this need, allowing the villages to achieve municipal status.

Approximately halfway through this century, Prince Edward Island began to address some of the issues which other provinces had dealt with a few decades earlier, as the province became adept in the art of negotiation for federal funding to be used for a wide variety of provincial and municipal purposes. The province introduced planning in 1951. Town planning had been largely a post-war wave from abroad and quickly evolved in Canada to meet the various conditions on the local scene. A *Town Planning Act* was created with several significant provisions. While much of this legislation related to the assessment and taxing of real property, every community was empowered to plan. *None* did - at least not in the sense implied in the legislation. But the province brought in regulations of its own under the *Town Planning Act*. These measures applied to every community except Charlottetown and Summerside. Early regulations established rudimentary land use and development controls in towns and villages, and some even went so far as to set out zoning in places. For example, in the Charlottetown Royalties, most of the village of Parkdale was declared a Business Development Zone. In the meantime, the *Village Services Act* was enacted to look after an expanding municipal role among settlements other than towns. The incorporated villages had the option of planning under the terms of the *Town Planning Act*. They did not rise to the occasion and, for years, they continued to defer to the province in the onerous task of development control. Later regulations were expanded to touch on some areas with no municipal incorporation. For example, regulations covered lands along 500 feet on either side of all paved roads; lands within 1 mile of all towns and villages; lands within 1 mile of all shorelines; and some special areas adjacent to Borden, Charlottetown and Summerside. All of this coverage encompassed a remarkable amount of territory by the late 1960's.

By 1968, the province was ready for its second *Planning Act*. This coincided with the time that a development "boom" began to change the face of the province. It was then that people generally began to become aware of land use regulations and what was expected of them. Regulations came out of the bureaucratic drawer and began to be enforced more vigorously, although sometimes this zeal was misplaced.

After the 1968 planning action, government also brought in the *Community Improvement Act,* the *Recreation Development Act* and the *Real Property Tax Act*. The *Community Improvement Act* introduced another level of municipal corporation in the form of Community Improvement Committees. The *Real Property Tax Act* radically altered the property taxing system, removing it from the school district level and placing it within provincial government jurisdiction. Poll taxes, school taxes, head taxes and labour taxes became a thing of the past. Schools were rapidly being consolidated under the Development Plan. School districts themselves were suddenly "extinct". The school districts did not disappear, however, as communities and neighbourhoods continued to associate with the school district names. As time passed, many of the districts incorporated as Community Improvement Committees.

It was during the late sixties that the province began to use its powers under the *Recreation Development Act* and the *Planning Act* to designate areas for protection from undesirable development. Many of the special planning areas were in the vicinity of provincial parks or on prime shorelines. With new measures in place regarding property taxes, non-resident and corporate land ownership and land designations, the province began to carry out land use planning exercises, using Development Plan funds. There were exercises in rural area planning, tourism planning, and industrial development planning. Except for the rural area planning, much of this was community oriented. In many instances, the communities and/or local governments were not ready to take the lead role, so these exercises were mainly of a "top-down" nature. A large area planning unit functioned in government for several years, but was unable to bring any area plans to fruition.

There was much talk about public policy-making, and finally, as we note elsewhere, the P.E.I. Land Use Commission was created as an indirect result of the intensive inquiry into land use the previous year by the 1973 Royal Commission. Once the Land Use Commission was ready for full operation, making its own policy proposals and hearing public appeals on land use decisions, government produced yet another *Planning Act,* which gave permanence and administrative status to the Land Use Commission.

The 1974 *Planning Act* said many of the same things that its predecessor had said, in terms of local government planning. With all the flurry of activity in land use matters, several municipal governments prepared to make their first excursions into the realm of municipal planning. By 1976, when government was beginning to realize several flaws in the *Planning Act*, a number of municipalities had already completed official plans for their jurisdictions, and three regional planning authorities had been established, for the Montague, Summerside and Charlottetown regions. Parkdale, Bunbury and Southport were among the first municipalities to adopt official plans in the mid-seventies.

The deficiency in the 1974 Act was identified; it was weak in its enablement of planning regulations and bylaws. This flaw was repaired through a major amendment of the enabling sections and, in one "fell swoop", the province was able to make sweeping development control regulations and municipalities (except for Community Improvement Committees) gained the ability to make zoning and subdivision bylaws in conjunction with their official plans. Government pursued its regulatory powers with zeal and a backlash from the general public resulted in modifications to some rules and a more relaxed attitude towards interpretation to enforcement. Unfortunately, much of the negative publicity gave "planning" a soured reputation and masked positive strides that had been made.

Much land use planning activity continued at the municipal level, since the provincial government had set up a team of planners and technicians to provide help to the municipalities. Local councils for the first time were able to take advantage of the legislation gaining experience in planning and independent decision-making. Those who adopted official plans were no longer dependent upon the provincial government in the matter of building permit decisions, for example.

Other legislative housekeeping followed in the late seventies, and by 1980, a universal major retail development (shopping centre) control effort was launched, as we have already noted. This control began as a regulatory moratorium, followed by a statute. Eventually, after an exhaustive study by a shopping centre commission, major surgery was again performed on the *Planning Act* and a new part was grafted in giving provincial and local governments effective controls over shopping centre development. In the eyes of some developers, this was a massive threat to free enterprise in Prince Edward Island, and a blight on government's record. But there were also those who said much the same thing about the *Lands Protection Act.*

By 1983, a new *Municipalities Act* had replaced a variety of statutes dealing with town, village and community improvement committee incorporation as well as numerous other municipal matters. Immediately following that, government decided to initiate a review of the *Planning Act,* in the light of the planning programs which had been moving so rapidly among the municipalities and the regions. That review activity carried over several years and finally concluded with yet another *Planning Act* in 1988. Among the most significant changes in the new Act was the abrupt demise of regional planning authorities since regional planning boards had not achieved as much as had been expected of them.

While this brief chronology provides a background to planning in the province, it does little to point out the turmoil and complexity that has characterized provincial planning since its inception. The "tinkering" that has marked the evolution of land use planning legislation since 1968 is exemplified best by one illustration. During our inquiry, a member of the legal profession offered to provide us with a collection of land use statutes and regulatory provisions that he had compiled in connection with an earlier dispute. In what proved to be a massive document, the index alone, albeit with some cross-references and overlaps, occupied several pages!

What, then, are the problems we have identified with respect to land use planning?

To begin with, we would like to recount something from our learning experience in our visit to other jurisdictions. As we recount in more detail in Appendix C of Volume II, we included in our tour a rural portion of upstate New York where many small villages were struggling with economic development and land use planning. The introduction of a new military base proved to be the impetus that compelled a profound look at regulatory controls, coupled with an educational program for local administrators and elected officials likely to be impacted by this development.

The result was a massive but easy-to-use handbook entitled *Guide to Land Development: Permits, Procedures, Community Planning and Design*. Sandwiched among various aspects of procedures was the text of an address made by Russell L. Egleston, Attorney-at-Law, who made his remarks initially to a community college gathering on the subject of "Roles of the Planning Board, Zoning Board of Appeals, Town Board, and Enforcement Officer in Zoning". His opening remarks contain a trio of messages that, in our view, touch directly on key difficulties underlying planning in the province. Egleston stated:

> Governmental powers over land use in upstate New York have evolved based on a strong town government and a strong county government. Our early Colonists did not enact laws limiting land use because there seemed to be an unlimited amount of land. The earliest settlers in New York set up a rather remarkable and extensive form of town government. They set up boundaries for the existing towns, provided for census of the inhabitants, made assessment lists of all male landowners, established prisons, established pounds for stray animals, built warehouses for ammunition, laid down rules on rights to vote, developed oaths for officers, established a local court system, provided for the appointment of constables, fence viewers, sealer of weights and measures, military officers, and recorder of brands for cattle, hogs and horses.
>
> As the country became more settled and as our population grew, people were becoming concerned with the overcrowding of land, congestion in the streets, safety from fire, flood and panic, adequacy of light and air, provision for transportation facilities, for water systems, for sewer systems, for schools, for public parks. Until that time, anyone could use his land for any purpose and in any fashion as he saw fit, except that he couldn't maintain a public nuisance without running afoul of the law.
>
> These several concerns that we just listed started to gel about fifty years ago and the result was zoning. Zoning is the division of land within a municipality into areas or sections or districts where only certain uses are permitted in those districts. This division or classification of land should be in accord with some overall plan or objective for the town, so that provision is made for those concerns we recited about. The overcrowding of land, congestion in the streets, safety from fire, flood and panic, adequacy of light and air, transportation facilities, water systems, sewer systems, schools, and parks.
>
> Thirty years ago, the Town of Clay, in Onondaga County, was at the crossroads, so to speak. The Town of Clay is just a few miles from the City of Syracuse. There was no question but that the Town of Clay was in the path of the future and that development was imminent. The Town of Clay had a very small population in those

days and was devoted almost exclusively to fine large farms. The position of the Town of Clay in 1954 was very similar to the position of the various municipalities in the Fort Drum impact area today.

In 1954, some New York developers, an architect, a dentist, and a lawyer came to the Town of Clay intending to buy a thousand acres and to develop it into a residential development. This would be the largest residential development in upstate New York. The Town Board of the Town of Clay, in 1954, said to these developers, "*Welcome to the Town of Clay but on our terms*". The town rushed to get together a comprehensive zoning ordinance and subdivision regulations. It required that there would be no septic tanks in this development, but that there would be a public sewer system connected to a whole-scale sewage treatment plant. This treatment plant would treat the sewage to a degree that it was compatible with the waterway, Seneca River, into which it was being discharged. We required that oversized sewer trunk mains be installed to meet the needs of the lands outside of the residential development which would, of certainty, be developed soon after.

Clay required that a public water supply be furnished to this development and that the water supply system provide adequate fire flows for fire protection. Oversized mains were required to meet the needs of the community which was certain to develop. We required that an elevated reservoir be constructed and that a water main from that source be laid over several miles of land to reach this community.

The town fathers required that a storm water drainage system be installed and that it be designed to accommodate the whole drainage basin. The most neglected utility for most developments is drainage. No one becomes concerned with the drainage from a single tract and the result often is that as a drainage basin develops, the downstream owners become flooded because the upstream developments increase the volume and velocity of run-off. We required that oversized storm water trunk lines be installed to accommodate all of the drainage basin. We required that street lights be installed along all of the streets in order to help reduce or control crime and to provide for safety of the new residents in this community. We required that all of the streets be built to tough town specifications and that they go through a two-year guarantee period so that if any defects developed, the developer would be required to repair them. We required that street trees of varieties which had a proven track record of survival in our climate, be planted along the streets. We required that strip parks and playgrounds be provided along the backyards of every home in the development. We established minimum lot setbacks for all of the buildings.

We required minimum turnaround circles at dead-end streets. We required that all water, sewer and drainage facilities be built under public contracts awarded by the Town of Clay to the lowest responsible bidder. All were built to tough town specifications so that the town knew what it was getting. The town would not be placed in the position of accepting, ostensibly for a dollar, facilities that someone else had built of unknown quality and design. We required that all of the costs of these water, sewer, and drainage facilities be financed pursuant to the Town Law and the Local Finance Law, so that the new inhabitants of this community would pay all of these costs and that none of these costs would be charged back against other inhabitants or lands in the town. In other words, there were no town charges and that this development was entirely self-supporting and to stand on its own two feet.

> On the other hand, *I have worked in many towns where planning and zoning was by reaction instead of by planning and farsightedness. Those towns didn't foresee drainage problems, but they were to see large numbers of people camping on the town board doorstep meeting after meeting complaining of flooding, complaining of street conditions, complaining about a myriad of other concerns which ideally should have been addressed by a tough town board at the beginning. These boards were entranced with the idea of private streets, because the town would not be responsible for them. But who do the residents come to when the developer vanished? They came to the town board with all of their problems and town board had to sift through it and come up with some late solution.*
>
> . . . *What we do here in the North Country now is going to determine the pattern for the North Country for decades to come.*
>
> There will be enormous pressure brought to bear on town board members in the next few months and the next few years because so many people have laboured most of their lives trying to eek out an existence and now see an opportunity to sell their land, to have some money for their retirement. They will be seeking desperately to get their lands zoned to attract developers and to attract the great numbers of people that we know are coming. Not only will these people require housing, they will require restaurants, grocery stores, drug stores, shopping centres, clothing stores, doctors' offices, veterinary establishments, and hundreds of other services that these thousands of people will require. Unfortunately, much prime agricultural land will likely be lost in the process and this is an irretrievable resource of which planners should be ever mindful. *It will take a tough town board and tough planners to do the job demanded so that your grandchildren will be able to say that northern New York is still a beautiful place in which to live. We,* the town board members, the planning board members, the board of appeals members and the zoning enforcement officers *are concerned with one thing, and that is land use.*
>
> *It is of great importance to always keep in mind that we are not dealing with people, we are not dealing with personalities, we are not dealing with your neighbours as such, we are dealing only with the use of land, land use.* We should remind ourselves of this frequently because it is so easy to get bogged down in personalities when we should be thinking of land use. [Emphasis added.]

The messages contained in this passage are relevant on all occasions but they bear a special poignancy should a fixed link project become a reality. Legislation in the province often has been "after the fact", in response to pressure that has built up first. Legislation has been created then and only then to devise a solution for problems which have been mounting. Only in rare instances has the stage been set by government anticipating trends and problems, then enacting legislative solutions in advance. In our view, it is time for the Province of Prince Edward Island to say, in effect, as the Town of Clay did: "we welcome development but on our terms". Secondly, it is time for the province to recognize that if standards are not set in place at the outset, the problems that follow rest at the feet of the taxpayers and their elected representatives. Finally, those charged with the regulation of land use policies must recognize in land use planning that the priority accrues to the land.

Throughout this report, we have directed our attention to many of the essential elements of a comprehensive land use planning exercise. As we turn our attention to the subject of "planning" *per se,* there are a number of initial points to be made in this regard.

It must be recognized that those who oppose planning - who favour a wide-open, laissez-faire, unregulated approach - are expressing themselves in favour of planning. It is a form of land use planning that produces the worst possible results but it is a form of planning, one that allows each individual landholder to be a planner without any centralized mechanism to coordinate conflicting goals or inconsistent uses.

While this form of planning may seem attractive to those who espouse the paramountcy of individual rights and to governments who wish to avoid the inevitable alienation that follows from more structured planning methods, which invariably are not to everyone's complete satisfaction, the long-term results ultimately are painful. The individual who espouses the freedom to exercise a full range of choice in the use or ownership of property is prone to rage when a neighbour demands an equal freedom to make an unfettered but unpopular choice. Again and again in our hearings we heard from people who acknowledged they opposed what the Royal Commission of 1973 wanted to do and now regret that stance. When the conflicts within a community produce tensions or when the results of so much individual planning produce foibles, governments are called upon to make decisions.

That point brings us to our second observation with respect to planning. The public pressure for collective planning and public receptiveness to planning exercises occur at two specific times, neither of which are opportune moments to engage in thoughtful planning. The first and most obvious time when there is a demand for planning is during a land use dispute. In the midst of controversy, there is a sudden groundswell of awareness and commitment with those embroiled in the heat anxious to ensure that a duplicate battle be prevented from happening in the future. The second - and often related - timing for widespread planning enthusiasm is during an economic boom. Rapid changes normally characterize enhanced activities and the opportunities for land disputes are therefore more likely to arise at such a time. In addition, during economic downturns there is more apt to be a mood of pessimism, an inability to have a visionary outlook on the future. Coupled with this is a feeling that the imposition of planning could discourage development at the very time when it is needed.

Neither of these times, when the public is most apt to be receptive to planning schemes, is the best time for planning. Good land use planning is far more than the application of band-aid solutions to "solve" an immediate crises. Planning options are many and varied. Each choice has repercussions for other sectors and activities. Careful thought and calm discussion are needed to select the best from the range of possibilities. This is not possible when the planning exercise is in response to a single set of circumstances or when emotions are running high over a particular issue. Nor is it possible when individual personalities may be behind an issue, as may be the case when a land use dispute erupts. Even in the absence of a contentious issue, an economic boom may not be the best time for good planning because the rapid changes may be outpacing the planning exercise, rendering options outmoded before they can be implemented. Good timing, we submit, is one of the cornerstones of good planning.

Elsewhere in our report, we make reference to the views of John McClellan, the former Executive Director of the Land Use Commission, who expressed the view that municipal planning in P.E.I. is a real "success" story. We are not prepared to be quite as emphatic: municipal planning - lacking in a visionary directive for the province as a whole - is not a "success" story in terms of Prince Edward Island. Municipal planning has been a success story to the extent that many communities have been exposed to planning exercises, have channelled local thinking into developing some blueprint for the future of their area and have had the commitment to complete and administer a plan for their locale. While these plans are often based more on existing use than on futuristic goals, they have been a more determined acceptance of thoughtful planning than the province has exhibited. We suspect that a key element in the success of municipal land use planning is that of timing: more municipalities have carried on the planning exercise in the absence of a crisis or economic boom. Perhaps a local controversy - or a potential one - initiated interest in the exercise but many of those communities with official plans have brought them into being without an imminent land use crisis as a motivation factor.

Good planning is far more than good timing. There is no set formula in planning. Planning from the top down does not work, for good planning depends on widespread acceptance of the plan's components and, if not a consensus on its elements, at least some understanding and agreement on the need for those elements. At the same time, planning purely at the local level is not a recipe for good planning either. While planning - to be understood and accepted at the local level and to be successfully implemented calls for ample doses of local input, leadership and direction is required in order to have consistency and/or compatibility. This applies whether the planning involves a single community or the province as a whole: it is of little use to have the whole neighbourhood in agreement that it is an area for residential use only to have City Hall (or the local C.I.C. council) think the site would be fine for the location of industrial users. Nor is grassroots planning for one community a success story if the community favours a continued tradition of rural farms but the province is prepared to allow a nearby landowner to subdivide his lands for summer cottages or suburban dwellings.

Just as good planning involves a judicious mix of planning from the top down and from the bottom upwards, land use planning at its best involves both leadership and follower skills on the part of a professional planner. The professional planner must take into account both the objectives and wishes of the political leaders and the grassroots; in addition, the skilled planner presents options and compromises to all parties to the planning process.

Co-mingled with these factors, planning must involve some vision of the future.

While these elements are easier-said-than-done, Prince Edward Island is by no means alone in struggling with land use issues.

During our out-of-province tour (described in Appendix C in Volume II) we met with Mr. Armando J. Carbonelle in Cape Cod. Mr. Carbonelle shared with us notes he prepared as part of the 1989 U.S./U.K. Countryside Stewardship Exchange that involved study by a joint international team of tourism in the Cornwall, England area. Under the heading "Issues and Concerns: Landscape and Economy", we found a number of themes that struck a responsive chord.

Issues and Concerns: Landscape and Economy

The objectives presented to the study team are concerned with *the development of tourism and countryside management measures that would protect the Cornwall landscape and help to diversity the local economy without destroying the identity and distinctive culture of local communities.*

The economy of West Penwith traditionally has been *dependent on farming* and mining. Both sectors have recently been subject to external forces which have brought about *a crisis in the local economy:* in the 1980's, a fall in world tin prices left 350 people unemployed in the area's only working mine at Geevor; the introduction of milk quotas has affected dairy-based farming. Unemployment of 16.2% is 7.7% above the national average, and incomes trail all English counties. Under conditions of economic recession, 90% of eligible farms have participated in the voluntary ESA compensated restrictions. *Changing agricultural policies and economics could lead to wholesale landscape destruction virtually overnight as short-term profits take precedence over longer range values.*

Tourism has been a major industry in West Penwith since the turn of the century, with Land's End, the county's leading attraction, drawing over 1 million visitors per year at its peak in the late 1970's. *The local land use regulatory system has in the past been susceptible to such strong economic forces, witnessed by the approval of visually incompatible holiday bungalows and trailer camps during the tourism peak. Lack of comprehensive tourism management threatens not only the outstanding values of the region, but the very viability of the tourism industry itself, which faces increasing competition from overseas destinations. Furthermore, a lack of cooperative effort on the part of the many government agencies and organizations with conservation, planning, and tourism responsibilities and a failure to involve local people in decision-making is hindering the success of programs; there is no shared vision or strategy for the region.* [Emphasis added.]

Approach/Methodology: A Strategy for West Penwith

A team approach, based on consultations with local, regional, and national interested parties, took the form of a strategic planning exercise. The team identified the values or assets of critical importance in the area, addressed these in a single overarching goal statement, and proposed strategies to achieve the goal. These are described under Findings, below. The team then devised a series of specific programs and actions to implement the strategies, and recommended the critical next steps needed to "make it all happen".

Findings: Values, Goal, and Strategies

The West Penwith values identified included the following:

An intact working landscape of international significance displaying their heritage of 6,000 years of continuous habitation, marked by a distinctive farming pattern of small fields defined by stone walls and hedges . . . tin mines, both ancient and modern . . . numerous ancient monuments scattered across the countryside . . . a colorful fishing industry . . . distinctive vernacular architecture . . . a strong Celtic (or perhaps pre-Celtic) identity . . . opportunities for coastal recreation . . . noteworthy artistic and literary traditions . . . all displayed on a spectacular coastal peninsula blessed with a mild climate and distinctive flora and fauna.

> The single goal adopted for the project was *to conserve this intact working landscape*. The *strategies* selected to achieve this goal, six in number, were all expressed in terms of building on existing local strengths. . .

To some extent a vision is built into the present Regulations made pursuant to the *Planning Act* by way of the Statement of General Planning Principles and Policies, contained in Part I. But this statement is not adequately linked to other portions of the Regulations and, it would appear, the Statement is far removed from the administration of discretionary elements inherent in other portions of the Regulations.

Consider, as but one isolated example, the statement in Part I of these Regulations that: "[l]arge residential (five or more lots) subdivisions will be approved only if the developer (a) can justify the need for the subdivision; . . . and (c) is not taking Class 2 or 3 agricultural land out of production prematurely or unnecessarily." Since Section 68 of the Regulations provides that: "[i]n addition to any other requirements of these regulations, this Part [Part VIII] applies to summer cottages and summer cottage subdivisions", we would assume that large summer cottage subdivisions must meet the standards prescribed for large residential subdivisions and more besides. But, with a massive surplus of cottage lots for which no building permits have been issued, it is possible to drive out the Brackley Point Road and spot a large billboard - in the center of a grain field outlining a subdivision certain to block out the view of the Bay on its completion.

We could cite example after example of this type of development and, with each one, we wonder why the rules established in Part I of the Regulations seem to count for naught.

Numerous provisions in the *Planning Act* and its Regulations provide discretionary elements but fail to say what factors are relevant in the exercise of discretion.

At the same time, the Regulations frequently constitute a verbal labyrinth.

As just one illustration, Part IX of the Regulations in relation to the subject of off-shore islands will suffice. The Office Consolidation of the Planning Act Regulations, as of September 18, 1989, included in Part IX the following provisions:

> PART IX
> ZONES SPECIAL PLANNING AND CONSERVATION ZONES
>
> 77. (1) The following provisions shall apply to all new special planning areas and conservation zones, other than those specifically referred to in section 78.
>
> (2) Before any new special planning area or conservation zone is designated and established under these regulations, the Land Use Commission shall hold a public hearing in the area, at which time the boundaries and objectives of the designation shall be stated and discussed.
>
> (3) Within thirty days following the hearing the Commission shall submit a report to the Lieutenant Governor in Council stating the results of the hearing and recommending action to be taken.
>
> (4) Work shall be initiated immediately following designation on a plan for the area.

(5) If a plan is completed within five years of the date of designation and is approved by the Minister and the Commission the designation of the area as a special planning area or conservation zone may be terminated by a notice published in the Gazette and thereupon the plan shall be deemed to be the official plan for the area.

78. (1) ***The areas of the province contained within the outlined and shaded portions of the maps 1 to 3 in Schedule A are designated and continued as special planning areas with the following objectives:***

Map 1 Cable Head

To preserve the fragile dune lands, ponds and vegetation of this International Biological Program site and protect them from encroachment of undesirable and incompatible land uses.

Map 2 Bunbury Island - Courtin Island

To protect Courtin (Bunbury) Island; to designate the land as a special development control area.

Map 3 Cavendish

To provide for the long-range development of Cavendish in terms of public health and safety, aesthetics, industry promotion, and environmental promotion; to prepare and adopt an official plan for the area under the direction of a planning board appointed by the Minister.

(2) This section applies to special planning areas and the provisions of this section are in addition to any requirements under any other provisions of these regulations.

(3) Subject to subsection 77(5), where any area is designated and established as a special planning area, the designation shall remain in force for a period of five years from the date on which these regulations come into force or the date of the designation, whichever is the later date.

(3.1) Notwithstanding subsection (3), the areas designated and continued as special planning areas by subsection (1) shall remain so designated until July 30, 1992.

(4) In this section "development" means the carrying out of any building, engineering, excavation or other operations in, on, over or under land, or the making of any material change in the use, or the intensity of use, of any land, buildings or premises without limiting the generality of the foregoing.

(5) No person shall commence or undertake any development in any special planning area without the prior approval in writing of the Minister authorizing the development.

(6) The Minister shall determine whether to give approval to any proposed development after an evaluation of the development by reference to the provisions of Part IV, V, and VI of these regulations and the stated objectives of the designation.

> **(7) Subject to the provisions of the Act, a building or structure, or use of lands, buildings or structures lawfully in existence at the date these regulations come into force may continue to exist. (EC601/77; 512/80; 543/82; 277/87; 373/87) [Emphasis added.]**

What does this designation of Courtin (Bunbury) Island mean? Section 77(1) suggests the provisions of Section 77 do not apply to any areas named in Section 78, but on the other hand, Section 78(3) makes specific reference to Section 77(5). Does the designation of Bunbury (Courtin) Island still apply? A consideration of Sections 78(3), 77(5), 78(3.1) and Order-in-Council No. EC123/89 provides no satisfactory answer to an otherwise simple question. And, if the designation did apply, what does it mean? It would mean "development", as defined in Section 78(4), required ministerial approval. On what would the Minister base his approval? According to Section 78(6), ministerial approval would depend on "an evaluation of the development by reference to the provisions of Parts IV, V and VI of these regulations and the stated objectives of the designation". Parts IV, V and VI of the regulations deal with "Building Regulations", "Subdivision Regulations" and "Subdivision of Land Adjoining Highways". These would be applicable in any event to the special planning area. As for the "stated objectives of the designation" that becomes part of the ministerial evaluation, in the case of the off-shore island, the objective is cited as being "to designate the land as a special development control area". Such provisions appear to bear a certain kinship to the intricacies of *Alice in Wonderland!*

When we examined the concept of scenic heritage roads, we found a fine example to illustrate, in a small, simple way, the kinds of frustration that have engendered so much dissatisfaction and hostility on the part of the public in dealing with government controls and regulations.

First, there is the name. For several years, certain roads have been linked as "scenic drives". The Lady Slipper Drive, Blue Heron Drive and the Kings Byway Drive circle the province in its three counties. By what illogical, irrational decision-making process was the title "scenic heritage" chosen? What was wrong with "rustic roads" or "heritage roads"? Why aim for confusion when it is unnecessary?

Let us move along to a much bigger concern. We begin with the assumption that laws, particularly laws about simple matters, should be clear and easily ascertainable by the citizenry. The law is such with respect to scenic heritage roads that cutting down a tree, shrub or plant without permission of the Minister can render the cutter liable to a fine "not exceeding one thousand dollars and, in default of payment thereof, to imprisonment for a term not exceeding ten days". Given the potential for a penalty and the relative simplicity of the matter, we would expect considerable ease in examining the law with respect to scenic heritage roads.

From our standpoint, we sought simplicity so we could frame with accuracy our discussion and recommendations on this subject. So, allow us to trace our steps to demonstrate our frustrations.

Our first point of departure was the *Planning Act,* S.P.E.I. 1988, cap. 4, where Section 8(1)(i) provided:

> 8. (1) The Lieutenant Governor in Council may make provincial planning regulations applicable to any area except a municipality with an official plan and bylaws, the City of Charlottetown and the Town of Summerside.
>
> ....
>
> (i) with respect to the designation and regulation of certain public roads as scenic heritage roads for the purpose of preserving and enhancing their aesthetic and environmental qualities; . . .

This provision raised two questions: (1) has there been any designation and regulation of certain public roads as scenic heritage roads and (2) in what geographical area can the Lieutenant-Governor-in-Council make regulations that would permit designations to be made?

To answer the first question, we would assume the regulatory provisions made pursuant to Section 8(1)(i) of the *Planning Act* would coincide with the literature provided by the Department of Community and Cultural Affairs. Such an assumption would seem to be incorrect.

A review of the "Planning Act Regulations Office Consolidation (as amended to February 27, 1988)" does not contain any mention of Scenic Heritage Road Regulations. This suggests that none had been passed.

However, the Consolidated Regulations, updated to the end of 1988, contain the "Scenic Heritage Roads Regulations" passed by Order-in-Council No. EC608/87. These regulations prescribe the offence and penalty for damaging a "scenic heritage road" which is defined as "a public road designated as such in the Schedule, and includes the verge, ditch and land immediately adjacent to the road". The Schedule names 2 roads in Kings County and 3 roads in Queens County as designated scenic heritage roads.

But these roads were designated under provisions of the *Planning Act* described as subsection 46(1) of the *Planning Act,* R.S.P.E.I. 1974, Cap. P-6. That Act has been repealed. Whether or not the five roads designated under EC608/87 continue to be so designated is dependent upon the interpretation of provisions such as Sections 5.32 and .33 of the *Interpretation Act,* S.P.E.I. 1981, c. 18 and a comparison between the previous and present *Planning Acts.* The latter comparison is naturally rendered more difficult by the practice of using loose-leaf binders where revoked statutes are discarded.

Without determining whether or not the original 5 scenic heritage roads continue to be such, we moved onwards to determine how the Department of Community and Cultural Affairs was able to publish a designation of 16 such roads. A partial answer resulted from a perusal of the *Royal Gazette*. By EC79/89 an additional road was added to the collection and a further 5 roads were added by EC427/89, these Executive Council Orders being published on February 18, 1989 and July 22, 1989.

We have been unable to find any legal designation for six of the scenic heritage roads described as such by the publication entitled "Scenic Heritage Roads of Prince Edward Island" and the investigation into the designation of the other ten roads was a merry paper chase.

Elsewhere in our Report, we comment on the terrible shape of land use planning legislation in the province. Scenic heritage roads is but one small instance of the massive housekeeping effort required to tidy up the whole regulatory regime.

From the outset, we have been concerned that the public is not well served in respect to public education and awareness in relation to land use planning. To test our hypothesis, we asked a member of our staff to adopt the role of a potential homeowner, anxious to learn what a well-educated consumer should know of land use rules before embarking on the acquisition of land for the purpose of building a home. In accordance with our instructions, our investigator went to Island Information Services and asked what pamphlets or other material would be available. She was directed to the Department of Community and Cultural Affairs. On visiting the Department, she was told to go to Island Information Services. Once she explained that she had been there and had been directed to the Department, she was told she could meet "with one of the men". She said she wanted literature to take with her for perusal with other family members, whereupon she was offered a copy of regulations on the installation of septic tanks. This approach is totally unacceptable.

Our inquiry has allowed us the opportunity to examine a wealth of material from other jurisdictions. It is readily apparent that land use planning and regulatory standards can be capsulized in easily understood language and in pamphlets that are aimed at common-user groups. An excellent example of this is the brochure "Planning In Manitoba: Making Choices for Change", to which we have made reference in Appendix D of Volume II.

When we met with various individuals experienced in land use planning in other jurisdictions, they invariably stressed the importance of media involvement in developing effective land use plans. While the local media have been very attentive to controversial land use disputes, there has been markedly less interest in exploring land use planning outside the contentious milieu. On the other hand, some individuals in the local media have developed "niches" in regards to the complexities of agricultural and fisheries components of the economy. To a lesser degree, environmental issues have been examined in somewhat of a documentary fashion. We are optimistic that individuals within the local media would be receptive to becoming involved in a fashion that would heighten public awareness of land planning ideas and creative development concepts.

In addition, we are of the view that the province - and, in particular, the Department of Community and Cultural Affairs - must put an end to the passivity that has characterized its approach to public education in planning matters. A regularized program of public education through conferences, community schools and other forums, combined with periodic displays on land use planning concepts at fairs, exhibits and trade shows can do far more for land use and the landscape than rule books and regulations.

Many Islanders are now familiar with computer technology that enables them to visualize in a matter of minutes what different colour combinations would look like on a house. How many have seen the same technology at work demonstrating how a few trees can change its appearance? Or how changes in design can affect the landscape?

Throughout our inquiry we have met with a number of departments and agencies, many with a shopping list of reforms needed in respect to the "nuts and bolts" aspects of land use planning. There is need for revision of standards, such as elimination of the 10-acre rule. Indeed, we could elaborate on dozens of these provisions that are in need of revision to some degree. Except for a few of the more obvious ones, such as highway access, we have deliberately not embroiled our report in this exercise.

What has become apparent to us is the need for closer cooperation between departments and other government agencies. Such an observation relates not only in reference to reform with respect to standards. It is equally applicable in the way in which each enclave of the public service operates in total isolation of other sectors when public interaction is involved. Members of the public in contact with the Department of Community and Cultural Affairs are not being informed of the involvement of the Public Utilities Commission on certain sewer and water matters. Significant gaps exist in the statutory provisions and in the application of regulatory controls because the Department of Community and Cultural Affairs is not coordinating its role and function adequately with the Department of Transportation and Public Works.

More intensive land use planning calls for a more active stance on the part of municipalities, particularly those which do not have official plans. In other municipalities, the time may be ripe for a fresh look at official plans that may need updating. As we pondered on how this might be accomplished, we learned of the approach adopted by the State of Florida once it decided on the need for state-wide comprehensive land use planning. The problem it faced was one of inducing municipalities which had no official plans to enter the planning exercise. Florida did so by setting a target date, after which no state grants would be available to municipal jurisdictions that did not have official plans. The remedy seemed so simple, yet as potentially effective, it has been emulated by a number of other jurisdictions and we have adopted it as the "carrot and stick" approach we commend to the province.

Outside the municipalities, the province has always assumed the "municipal role" in relation to rural planning. Should it continue to act in that fashion? We have considered a host of other possibilities. Ideally, land use planning should be carried on through an agency with considerable autonomy from government, which sets only the general policy framework and leaves the agency to do battle with the forces that inevitably line up in any land use controversy. In many respects, the Land Use Commission as the final arbiter has given us sufficient pause to look elsewhere for an agency to take on the municipal role for the Island's countryside. Our choices, it would seem, are limited: we can opt for leaving these functions with the Department of Community and Cultural Affairs or we can propose some new agency. After much reflection - and with some misgivings in light of what we view as deficiencies in the Department's previous track record - we are of the view that another agency would only serve to fragment a system already suffering from this difficulty.

Accordingly, we recommend

- **THAT the province develop a more pro-active, creative stance towards land use planning.**
- **THAT public participation, including widespread use of the local media, be a central feature of land use planning.**
- **THAT the province, particularly the Department of Community and Cultural Affairs, adopt a more realistic approach to public awareness of land use planning, including the preparation of pamphlets and other materials for user groups, the use of computers to illustrate alternative planning mechanisms, a regularized program of public education through conferences, community schools and other forums and periodic displays on land use planning concepts at fairs, exhibits and trade shows.**
- **THAT legislation, regulations and other written materials associated with land use planning be prepared, as much as possible, in simple terms that can be readily understood.**
- **THAT the province undertake greater inter-departmental coordination in respect to the development, administration and application of policies and standards relating to land use.**
- **THAT comprehensive land use plans for the province include a municipal planning exercise such that those municipalities which now have official plans commence a planning exercise. In all instances, this municipal planning must be accompanied by the boundary rationalization and/or annexation/amalgamation of adjacent areas (or community improvement committees).**
- **THAT the province establish a realistic target date for the attainment of such a goal by all municipalities, with the proviso that municipalities which do not have official plans in place at that time endanger their eligibility for provincial grants pending the adoption (or revision) of official plans.**

Chapter 16

STRUCTURES

While land use and land ownership issues impinge upon all departments and agencies of government in one way or another, much of the activity has three centers: the Department of Community and Cultural Affairs, the Land Use Commission and the Land Development Corporation (now known as the Agricultural Development Corporation). Because of recent lengthy, highprofile controversies before the Land Use Commission, it may well be the agency of government most closely identified in the public eye with land matters, so we begin with that body.

The basic structure and functions of the Land Use Commission are set out in Part I of the *Planning Act,* R.S.P.E.I. 1988, cap. P-8, which contains three sections.

In the first of these (Section 3), the Land Use Commission is established as a "body corporate", consisting of "seven members appointed by the Lieutenant Governor in Council none of whom shall be a civil servant or a member of the Legislative Assembly." Members of the Commission are appointed for a three-year term and are eligible for reappointment for a further successive term of three years, but once a member has completed a second term, the member is not eligible for further reappointment until after a one year time lapse. The Chairman is named by the Lieutenant Governor in Council from among the seven members but, in the absence of the Chairman, members can elect a temporary chairman from the membership present at a Commission meeting, where a quorum is four members. Remuneration and reimbursement for expenses are fixed by the Lieutenant Governor in Council. The legislation provides for the appointment of a substitute member in certain circumstances. Under the provisions of section 3(7), the determination of "all issues and matters coming before the Commission" is by a "majority vote of the members of the Commission present and voting" with the Chairman voting only for the purpose of breaking a tie.

Section 4 of the *Planning Act* calls for a staff for the Land Use Commission, consisting of "an executive director, a secretary, and, with the concurrence of the Minister, such other officers as may be necessary to enable the Commission to carry out its functions". In addition, the Commission has the power to "call upon any department...and any Crown corporation or agency to provide assistance in carrying out its functions". Those functions, enumerated in section 5 of the *Planning Act*, are as follows:

> 5. The Commission shall
>
> (a) hear appeals under Part V and deliver decisions in accordance with the applicable statutory provisions and the rules of natural justice;
>
> (b) establish procedures and guidelines governing appeals and the conduct of its business;
>
> (c) carry out such other functions as are conferred by an enactment or as the Lieutenant Governor in Council may require;

(d) approve official plans under Part III if satisfied that the plans meet the minimum requirements established by the Lieutenant Governor in Council pursuant to section 7;

(e) make an annual report of its activities to the Lieutenant Governor in Council on or before March 31 in each year.

Other provisions of the *Planning Act* have a direct impingement on the Land Use Commission. Chief among these is Part V which is devoted to the subject of Appeals. Section 28, the only section in Part V, is of central importance to the Commission's appellate function. That section reads as follows:

> 28. (1) Subject to subsection (2), any person who is dissatisfied by a decision of a council or the Minister in respect of the administration of regulations or bylaws made pursuant to the powers conferred by this Act, may, within twenty-one days, appeal to the Commission.
>
> (2) Subject to adherence to the rules of natural justice, the Commission shall determine its own procedure.
>
> (3) The Commission shall hear and decide appeals and shall issue an order giving effect to its disposition.
>
> (4) The Commission shall give reasons for its decision.
>
> (5) The decision of the Commission is final and binding on all parties to the appeal and no appeal lies therefrom.
>
> (6) The council or the Minister, as the case may be, shall enforce an order made by the Commission.

We solicited the views of Mr. John McClellan, who retired in 1988 after 15 years as Executive Director of the Land Use Commission, to draw on his experience on the workings of the Commission. Since Mr. McClellan had been with the Commission since its birth, he was uniquely placed to provide his impressions in addition to fleshing out the Commission's chronological development. Here is what Mr. McClellan had to say:

> At the time of its formation, in 1974, no one was quite clear on what the Land Use Commission was to do and what its future would be. The Royal Commission had identified numerous problems, but had suggested solutions that were not deemed to be acceptable to the provincial government. Within the bureaucracy there was a concern that politicians did not have the will to make and enforce difficult decisions on land use. Consequently, the Committee on Land Use and Development Issues saw the Land Use Commission as the rabbit that they would pull out of the hat; it would then be transformed into the Moses who would lead Islanders to the promised land of sound land use planning.
>
> The Land Use Commission was a completely indigenous development. At no time did the Committee survey the situation elsewhere to see what kind of bodies were in place there or what their experience had been. It must be stressed that in the early 70's there was practically no expertise on land use planning within the province, apart from a couple of people with some background in municipal planning.

In his report, Mr. McClellan reviewed the composition of the Land Use Commission in these terms:

> The Wells Committee proposed a nine member Land Use Commission, with seven members drawn from the private sector and two non-voting members drawn from the public service. The seven private members would be drawn from groups reflecting the economic composition of the Island, e.g. farming sector, fishing sector, tourism sector, etc. The number of commissioners - seven - was chosen to reflect a variety of interest groups and because it was thought that more than seven would be unworkable.
>
> (a) *Representive nature of Commission*
>
> In its initial appointments to the Commission in 1974, the Minister responsible for the Commission, Gilbert Clements, advertised for nominations to the Commission, and several of the original seven were selected from names submitted. Since that time appointments have been made by the Lieutenant Governor in Council, with little input from the public or the Land Use Commission.
>
> No formal guidelines exist for appointments; over the years the Commission has been a fairly broad-based group. Appointments have reflected the regions, the farming and small business sectors, and women. Most appointments have consisted of successful, middle class Islanders. This has meant that successive Commissions have reflected a "small-c" conservative approach, or a middle-of-the-road approach, reflective of the dominant element within the society. This is probably responsible for the sound and sober image the Commission has usually enjoyed. On the other hand, these types of appointments guaranteed that the innovative role that the Wells Committee envisioned has never materialized. The Commission, by its terms of reference and by the appointments made to it, has been a re-active body, rather than a pro-active body. In recent years, since the advent of the shopping centre legislation, a new problem has emerged. The time required of Commission members has increased, to the point where it is now almost impossible for a person with a full-time job to be a member of the Commission. The Commission then becomes an older body, with retired persons; those with seasonal occupations or those who for one reason or another have ample time to devote to Commission duties. Whether the heavy workload will continue is difficult to foresee.
>
> (b) *Expertise*
>
> In most instances a knowledge of, or an expertise in, land use matters has not been seen by Cabinet as a prerequisite to appointment to the Commission. There have been notable exceptions - . . . but they have been the exceptions. In addition, successive Cabinets have seen the Commission as a body dealing primarily with rural or countryside issues. In fact, over the years, a growing number of the cases coming before the Land Use Commission have been from suburban or urban fringe areas, where planning has been most successful. Over the years the Commission has lacked members with municipal experience. Too often rural Commission members lack an understanding of or empathy with the problems of municipal government. More than in most other provinces the Land Use Commission is a populist body. In other provinces the tendency is towards smaller appeal bodies, often staffed by full-time members, who have specialized expertise to bring to the problems before them. On the Island, however, the Commission is a populist body, more akin to a jury than a

specialized tribunal. This system appears to have served the province well and given the Commission a status that similar bodies in other provinces, such as the Ontario Municipal Board, do not enjoy. The P.E.I. model, though, does place a heavy responsibility on the Executive Director, who is the source of technical expertise within the Commission.

(c) *Patronage*

In most cases appointments to the Commission are patronage appointments. Within P.E.I. this situation is inevitable, although similar situations prevail elsewhere as well. Despite the known political background of most members, I did not see a single case in fifteen years in which politics influenced a Commission decision. Nor was I aware of any instance in which a Minister attempted to influence the Commission, either individually or collectively. Commission members have tended to leave their politics at the Commission door; in some instances they have bent over backwards not to be seen to be political.

Too close a proximity to the political process can be a threat to the independence of Commission members. The only hint of political pressure I ever observed was in the case of a former member who had been defeated for a seat in the legislature, was appointed a Commission member and was intending to run in the next election. He was very reluctant to vote against the Department or Minister in appeal cases. The pressure was self-inflicted; he did not wish to be seen as going against the government. Despite the political nature of the appointments, the arms-length relationship with government has been successfully maintained throughout the Commission's history.

(d) *Size*

The size of the Commission has sometimes been questioned. The total of seven private sector members was established by the Wells Committee before it was recognized that the Commission would function primarily as an appeal body. The seven members representing an array of interest groups would provide the broad base of support needed to spearhead strong land use policies.

Other provinces have appeal bodies that carry out appeal functions equivalent to the Land Use Commission. In most cases appeals are heard by a single person or in appeals of greater complexity by a panel of three persons. The question then arises - would a similar system be more efficient and less costly for Prince Edward Island?

In other provinces appointments to such bodies tend to consist of persons with considerable expertise and experience. Ted Blois, Q.C., former long-time chair of the Nova Scotia Municipal Board and its predecessor, is an outstanding example of this type of appointment. In many cases there are full-time appointments and often they handle a much broader range of duties than the Land Use Commission, e.g. tax assessment appeals, municipal expenditure hearings, etc. Members of these boards are professionals and viewed as members of the bureaucracy by the general public.

More by accident than deliberate intent, the Land Use Commission has developed in a different manner. Members of the Commission are amateurs, not careerists, and are not viewed as civil servants by the public. The result has probably been a higher public esteem for the Commission and its decisions than if the professional approach had been adopted. In the context of a rural and small town society a shift

> to a smaller, more professional Commission may be difficult, even if deemed advisable. This is not to say, of course, that there is anything magic about the number "7"; it is probably the largest number that can function successfully in this situation. Presumably one of the recommendations of the current inquiry will relate to the populist type of Commission that is unique to the Island.

Another aspect that McClellan dealt with in his report to us were the functions of the Land Use Commission. Again, we would like to share his perceptions on this topic, beginning with his discussion on the primary function of the Commission - namely, its appellate function.

> Within a year of its beginning the Land Use Commission was on its way to becoming a far different body than its founders had imagined. Far from becoming a leading force for land use changes, it became an appeal body, second-guessing government's decisions on specific cases.
>
> (a) *Appeals*
>
> (i) Background
>
> Most provinces have found it necessary to establish planning appeal boards, which hear appeals from persons who have been denied permits or who are opposed to the issue of permits.
>
> Ideas underlying the establishment of these boards can be summarized as:
>
> - a hearing before the board ensures the fairness of the decision, in that it is being examined in detail by an impartial body. In the case of an administrative decision made by a property development officer in the Department, all interested parties are not consulted
>
> - decisions in planning matters depend upon the exercise of discretion in varying situations, much more than in the application of a body of precedents, as occurs in the court of law
>
> - proceedings before an appeal board can be less expensive and more speedy than proceedings in court. In Prince Edward Island, prior to the Land Use Commission, there existed a Provincial Board, consisting of civil servants plus appointments from the private sector. This Board made recommendations to the Department on applications for permits and then could hear appeals against those decisions. In other words, the Board was involved in the initial decision and the appeal against it. Under these circumstances the Board had a credibility problem and was little used by the public. Why bother to appeal to a body which had already ruled against you? Thus, there was a void in 1974 waiting to be filled. There was much latent dissatisfaction with the decisions being made under the Regulations of the Planning Act, but there was little way that that dissatisfaction could be expressed except through protests to local members of the legislature who often attempted to influence the situation. The Land Use Commission filled the void and within two years of its formation was hearing up to fifty appeals per year.
>
> (ii) Changing nature of appeals

When the Land Use Commission first began to hear appeals in 1975, most were short and relatively simple. Since municipalities were only beginning a formal planning process, almost all appeals were against decisions made by the Department of Community Services under the Planning Act Regulations. Most concerned the denial of building permits along designated highways, or with inadequate sight distance or an infringement of the vague criteria of what is now Section 15 of the Regulations. In few cases were the people appealing represented by lawyers; the Commission and the Department seldom used legal services. Cases were short and justice was speedy. Several cases could be heard in an afternoon. Decisions were often made on the same day the case was heard. Many today, both inside and outside government, look back to these early years as the Commission's "golden years" with the implied wish that the situation could be returned to "them times". Over the past fifteen years a variety of factors has brought about change in the way the Land Use Commission hears appeals. Chief among these factors are: 1) an increase in the number of lawyers taking cases before the Land Use Commission. This is part of a trend within society to a greater dependence on the use of legal services. While no doubt this trend has been beneficial to the legal profession, it is not clear that it has benefitted the appeal process. In most cases the length of an appeal varies directly with the numbers of lawyers involved. What was a simple and inexpensive alternate to the courts has become more complicated and more costly. Not only is the expense to those appearing before the Commission increasing as they hire lawyers, in many cases the respondent, especially if it is a municipality, and the commission itself feels obligated to be represented by legal counsel. The Commission functions best as a group of people bringing common sense to bear on discretionary matters within the field of land use planning. It is not a court of law, yet increasingly, it is being forced to function as such. 2) [R]ulings by the Supreme Court. As might be anticipated, rulings by Supreme Court judges have had a considerable effect upon the operation of the Commission. Appeals can be taken to the Supreme Court by an aggrieved person on grounds that the Commission has exceeded its jurisdiction, denied natural justice or made a fundamental error in law. The merits of a decision cannot be appealed to the Court; presumably, if it proceeds properly, the Commission has a right to be wrong. In fact, the reluctance of courts to involve themselves with the merits of planning decisions is one of the main reasons that planning appeal boards have been established. Butler vs. Land Use Commission, 1975, marked the Commission's first appearance before the Supreme Court. The Commission had upheld a decision of the Department to deny a subdivision proposal at Winsloe. The owner of the land, Reginald Butler, appealed the decision. The appeal was heard by the Chief Justice, who ruled in favour of the Commission. In so doing, however, he stated that in reaching its decision, the Land Use Commission had unfettered discretion. This, for several years, was interpreted by the Commission to mean that it possessed the right to make any decision it wished, provided the procedural niceties were observed. Only after Beaton vs. Land Use Commission (1979) did the Commission begin to recognize the limits to its powers. An application for a large suburban shopping mall had been denied by the C.I.C. of West Royalty but allowed on appeal by the Commission. The Court's decision brought home to the Commission the fact that it was bound by the Planning Act and could exercise discretion only within the bounds of the law. Self-evident as this may seem now, it should be remembered that, in an Island context, until recently many Ministers and municipal councils have not seem themselves as bound by the legislation under which they operate. Food City vs. Land Use Commission (1987) is the third case which has had a major impact upon the Commission. In order to speed up a hearing on a major retail store, because the Commission feared the building would be up before it heard the appeal, the Commission made some preliminary decisions which were challenged in the Supreme Court. Justice McQuaid's subsequent decision resulted in the eventual resignation of the Commission under a cloud. Through a variety of errors the Commission had been brought into disrepute. The result of this traumatic experience was to make the Commission much more concerned with legalistic procedures, reluctant to go into major hearings without legal counsel and, at times, more concerned to do nothing that could be challenged in court, rather than conduct a hearing in an expeditious manner. 3) complexity of cases. As Island society has become more complex, the nature of the cases taken to the Commission have become more complicated. During the 1970's most cases involved single family dwelling permits, with the occasional commercial structure. Fairly seldom did cases involve a broad public interest (notable exceptions were a provincial tourist information centre at Wilmot and a castle at Cavendish). Beginning with the enactment of Part III, Major Retail Development, of the Planning Act, in 1981, the nature of cases before the Commission changed. The Commission was called upon to hear appeals involving multi-million dollar shopping centres and, later, time-shared condominium units, etc. Although most cases can still be handled in one or two sessions, many are now taking much longer. There are various ways in which Commission hearings could be made more speedy, but they involve elements such as prefiled briefs and other complicating procedures which the Commission has been reluctant to adopt. Despite the frustrations posed by long Commission hearings, it remains a fact that applications are processed and appeal cases disposed of far more rapidly in Prince Edward Island than in other provinces.

(iii) The question of final authority

Subject to appeals to the Supreme Court on matters of procedure and jurisdiction, the Land Use Commission's decisions are final. The Crown is bound by the Planning Act. Within the area covered by the Planning Act Regulations then, seven appointed members have the ultimate authority to determine whether a development proceeds or fails. The fact that an appointed body can reverse, on appeal, the decision of elected persons has been a matter of concern, especially to municipal councils, since its beginning. The Town of Montague, for example, carried on a running battle with the Commission for many years, advocating its abolition. It is easy to see how the Commission can be regarded as a threat, especially given the position taken by the Commission, that it is hearing a matter *de novo* and can reach any decision that the council could have made. At the provincial level, the question of the Commission's ultimate power has not been an issue in recent years. Under the Planning Act, any Department must obtain a building permit for any public work, but in recent years none of these decisions have been appealed. A notable case involving a Department and the Commission occurred in 1976. The Department of Tourism secured a building permit for a tourist interpretative centre on an 80-acre parcel of prime agricultural land on the outskirts of Wilmot. The

> decision was appealed by the National Farmers Union. The appeal was sustained by the Commission, on the grounds that it was a misuse of prime agricultural land. Soon after, Cabinet decided to construct a new regional high school at Elmsdale. This was a controversial decision in that many people thought it should have been built within a community, either Alberton or O'Leary. With the Wilmot decision in mind, Cabinet was concerned that the decision to construct a school at Elmsdale would be appealed to the Commission and that the Commission would uphold the appeal. Consequently the Planning Act Regulations were amended and the site of the school was withdrawn from the area covered by regulation. As a result, of course, the Commission lost its jurisdiction and construction of the school proceeded without mishap. In a later round of hearings held by the Commission in 1977, when the Commission suggested that major public works be exempt from appeals, the public was not receptive; there was a strong belief expressed that government should be treated no differently than a private developer. The possibility of a major conflict between government and the Commission over a significant public works project remains. From government's standpoint the only solution may be to delete the proposed site from the Regulations. This would appear to be an issue that should be addressed by the new Royal Commission. On the one hand, supremacy of government over an appointed body must be maintained. On the other hand the situation with respect to private appeals seems satisfactory. A change in which an appeal to Cabinet is possible from any Commission decision could simply take us back to pre-Commission days when Department decisions on building permits were subjected to much political influence and overturned by Cabinet Ministers on a fairly frequent basis.

While the appellate function of the Land Use Commission is its primary one - and the function that receives public attention - it is not the only task assigned to the Commission's mandate. From time to time, the Commission has been called upon to act in an advisory role with respect to land use policy. Once again, the words of John McClellan are pertinent to enriching the background on this particular aspect of the Commission's workload.

> Over the years the development of land use policy has been a weak point within the governmental system. Politicians, by and large, tend to be wary of policy, much preferring the specific to the general. The Department of Community and Cultural Affairs, and its many predecessors, has been reluctant to tackle land use policy, preferring instead the nuts and bolts of regulation. Various policy mechanisms at higher levels, such as Policy Board in its many guises, have never shown a great deal of interest in land use policy. The result has been a sort of policy vacuum, to be remedied by the appointment of Royal Commissions.
>
> The Wells Committee, after concluding that the policies proposed by the Royal Commission were too radical to implement, sought to fill the vacuum with the Land Use Commission. The Committee did not consider the Department of Community Services as an appropriate mechanism for policy formulation. In fact, no official of the Department was a member of the Committee. In retrospect, this was an unfortunate mistake, in that the Committee lacked much of the technical knowledge that would have been helpful.

Under the new Planning Act of 1974 the Land Use Commission could formulate policy or receive policy suggestions from various sources within government. After a round of public hearings the Commission would then recommend policy to Executive Council which could adopt, modify or reject it. In the view of the Committee, the Commission would be a buffer between the public and government.

Since its inception the Land Use Commission has submitted numerous reports to Executive Council on topics ranging from natural areas to non-resident ownership. Although, legally, the Commission could have held hearings on any matter, in practice, the Commission prepared policy reports only upon a request from Executive Council (this did not preclude the Commission lobbying a Minister or Cabinet on the need for a report).

The hopes of the Wells Committee were never realized. The Commission did not become a leader in the policy field. It refused to play a public advocacy rule.

Its most notable success came in its first round of public hearings, in 1975. In effect, the Commission took out the recommendations of the Royal Commission on Land Use for public scrutiny. It was during this round of public hearings that the depth of feeling on land use issues became apparent. The Commission conducted its hearings shortly after the B.C. government had begun its agricultural land preservation program. The Commission was seen as government's vehicle to impose a land freeze followed by zoning on the Island. The Commission's report to Executive Council emphasized the need for a slower, more deliberate pace and the need for a long-term perspective.

Over time, successive Commissions felt increasingly uncomfortable with the policy role. There was also a sense of frustration when few, if any, of the Commission's recommendations were adopted. The fact that the Commission was ignored by government during the development of shopping centre legislation and the Lands Protection Act did not go unnoticed. Under the new Planning Act, sections dealing with the Commission's policy role disappeared, although presumably it could function in this area if so requested by Executive Council.

The Commission's lack of success in the policy area is not surprising. To a degree its appeal function, which has become its dominant role, runs counter to a policy advisory role.

To maintain its impartiality and arms-length distance from government the Commission cannot be seen as an advocate of specific policies. If the Commission were to advocate the strengthening of the ten chain rule, for instance, could an appellant seeking relief from it expect a sympathetic hearing from the Commission?

More importantly, the Commission, by its very nature, is a reactive body, not an innovative one. It does best when faced with a problem of limited scope, as in an appeal, rather than in a free-wheeling approach to policy. It can play a useful role in reacting to proposed policy changes, giving a response based upon its appeal experiences and the varied backgrounds from which its members are drawn. This is an area that could be developed to a grater extent than at present.

Inevitably, there is tension between an appeal body and those whose decisions are being scrutinized by that body. The result has been that Executive Council has been reluctant to entrust policy formulation to a body over which they have little control.

> Similarly, the Department of Community Affairs or its predecessors have been reluctant to work closely with the Commission. The same applies from the Commission standpoint.
>
> Finally, policy proposals emanating from the Commission are in large part proposals of the Executive Director. Only he has the time and expertise to consider policy matters. Inevitably, then, policy proposals will reflect his opinions, biases and conclusions. (In itself, this may not be a bad thing.)
>
> The Land Use Commission is not an appropriate body for the development of land use policy. It can be a useful body to react to new policy initiatives.
>
> What should be the source of provincial land use policy, on an ongoing basis, if not from the Land Use Commission? The architects of the new Planning Act have suggested a Provincial Planning Division within the Department of Community and Cultural Affairs. It is too early to assess its success. The Royal Commission has a vital contribution to make in this area, since the province has not been able to resolve it in the past. The challenge is to develop an effective means by which existing policy can be assessed and new policies devised.

Another function assigned to the Land Use Commission is contained in section 8 of the *P.E.I. Lands Protection Act,* R.S.P.E.I. 1988, cap. L-5, which charges the Commission with the responsibility for reviewing applications from non-residents and corporations seeking approval to hold land where the applicant's aggregate landholding exceeds five acres or contains shore frontage in excess of one hundred and sixty-five feet and applications for special permits from persons wanting to acquire or retain aggregate landholdings in excess of 1,000 acres and from corporations seeking to acquire or retain aggregate landholdings in excess of 3,000 acres. This function has recently been enlarged since farm corporations, once exempt from the need to have the consent of the Lieutenant Governor in Council in acquiring land in excess of five acres or with shore frontage of more than 165 feet, are now subject to this requirement as a result of an amendment to the *Lands Protection Act* in 1990.

From McClellan's account, the role of the Land Use Commission in the administration of the *Lands Protection Act* has not been a proud chapter in the Commission's history. His description was confined to a brief paragraph which stated:

> Throughout most of its history, administration of the ownership legislation has been perfunctory. Since 1974, most applications have been routinely approved. In most years one to three applications might be denied; in some years none have been denied. Applications are given little attention and little investigation is carried out. In a sense it has become a monitoring operation, although what is being monitored is not clear. Within the recent past, the program has been drifting, like a ship without a rudder.

Other functions of the Commission are not major components in the Commission's mandate but mention of them completes the picture in identifying the responsibilities assigned to this agency. Once again, we are indebted to Mr. McClellan for his commentary:

> It hears appeals under the *Unsightly Property Act*. No appeal has been heard under this Act for at least five years. Apparently, after difficulties with car bodies in the previous decade, the Act is no longer much used. The aesthetics of the landscape,

> both physical and cultural, could well become a major issue in the 1990's, with continuing growth in the tourism industry and a growing environmental consciousness. The present Act is inadequate to deal with broader questions of visual standards.
>
> Under the *Municipalities Act* the Commission holds public hearings for municipalities that wish to extend their boundaries into unorganized land. Based on the hearing, the Commission then recommends to Executive Council, who makes the final decisions. The Commission plays a useful role in these proceedings.
>
> In my view, however, the legislation on municipal boundaries needs a closer scrutiny. In P.E.I., there are no procedures for the expansion of larger, serviced municipalities into smaller, unserviced ones, despite the efficiency of the larger municipality to provide services. East Royalty can extend its boundaries into unorganized territory, but not into Union Road, without the agreement of Union Road. In many other provinces, a municipality such as East Royalty could apply to annex a portion of Union Road and would be granted that right if it could demonstrate that it could more efficiently service that area. Many of the servicing problems of the greater Charlottetown area might have been lessened by annexation procedures; it may now to be too late for such action.
>
> A second area of concern is the amoeba-like ability of communities to divide and survive. This has occurred both in the North River and Winsloe areas, where, because of internal disputes, one part of the community broke away and set up a new municipality. In the case of Winsloe South, the community consists of a single road. There is a need for legislation that would, if not prescribing the minimum size of a community, at least set out a set of procedures that must be followed before a break up can ensue. A break up has major consequences for land use planning and for servicing.
>
> Under the *Planning Act* the Commission is responsible for the approval of Official Plans for communities. This is an example of a job being assigned, but no job description being provided. In the absence of provincial policy or standards the Commission has been at a loss to know what to do. Aside from checking for a degree of internal consistency and ensuring that the legal requirements within the Act had been met, the Commission tended to approval Official Plans in a rather perfunctory manner. What this reflected was a lack of policy at the provincial level. The problem may be remedied under the new Planning Act, where guidelines are to be provided for the Commission's use in the approval of plans.

After this detailed review on the Land Use Commission, Mr. McClellan shared with us his outlook on the future of the Land Use Commission in this passage:

> In my view (which is obviously biased) the Land Use Commission has served the province well since its establishment in 1974. It has become a part of the institutional framework of the province and has established a fair degree of credibility. Its strength lies in its ability to provide objective, non-expert judgement to the matters brought before it. If competent people continue to be appointed to it, it should be able to fulfil its appeal function indefinitely.
>
> The recent emphasis upon the legal profession and its procedures in Commission appeals is, apparently, a feature of contemporary society. It is difficult to see how

> the Commission's hearings can be speeded up, within the context of natural justice. Appointment of a lawyer as Chair did not expedite matters as I had anticipated it might.
>
> The future workload of the Commission is difficult to predict. It fluctuates greatly with the economic climate. During the recession of the early 1980's the caseload diminished; during the recent past the caseload has been very heavy.
>
> Much depends on the legislation which is being appealed to the Commission. If the shopping centre legislation lapses, a heavy burden would be lifted from the Commission. In my view shopping centre regulation should never have been placed in the Planning Act. In its present form it has little to do with land use and much to do with the profitability of existing businesses. A board composed of chartered accountants is needed to hear these appeals. Changes in the Lands Protection Act, with a greater scrutiny given to applications, would increase the workload of the Commission.

While we have opted to provide information on Mr. McClellan's views in considerable detail, his report was not the only source for commentary on the Land Use Commission. We also enjoyed the benefit of both extensive public commentary and private asides on the Land Use Commission from many groups and individuals.

We have been greatly impressed by the high esteem accorded the Land Use Commission by many members of the general public. It is apparent to us that the Land Use Commission commands a considerable degree of respect in the public eye. The Commission is perceived to be fair, conscientious and impartial in its function as an appellate body. Credit for its reputation does not lie with any one individual, although Mr. McClellan's long association with the Commission and his dedication to land issues have certainly been important factors in moulding the Commission and ensuring it the prestige now enjoyed by this agency. Equally important, however, have been the efforts of the often unsung efforts of Norma MacNeil, who, for many years, has been the only other staff person assigned to the Commission. This "two-person band", directing the work of the Commission "backstage" as its staff is now led by Mr. John Blakney, who is responsible for fulfilling the role of Executive Director. That manner in which the Land Use Commission has fulfilled its mandate during our tenure - an interval that coincided with, perhaps, the busiest and most demanding era in the Commission's history leaves us with no doubt that Mr. Blakney has been an excellent choice as successor to Mr. McClellan. The Commission has also had the benefit of a number of excellent appointees who have served as members or who have chaired the agency; the praise accorded the work of the Land Use Commission in the submissions made to us can only reflect quite positively on the responsible manner that those members of the public named to the Land Use Commission have responded to the challenges presented by disputes that have, on frequent occasions, been tedious, divisive, contentious and even bitter battles on land use issues.

Having said this, however, does not mean we intend to confine our remarks to laudatory comments about the Commission. The public did not do so, although we do not agree with some of the suggestions made in respect to potential "reform" of the Land Use Commission.

One of the most frequently-raised comments about the Commission's work was the complexity, length and cost of some hearings. This was, we suspect, a natural reaction given that our hearings coincided with the longest hearing in the history of the Land Use Commission. Disputes that have centered on such proposals as Greenwich and the West Royalty shopping mall have been long and costly. But, in our view, they were necessary. These hearings involved complex and contentious matters. They involved issues that needed prolonged public debate.

We do not agree with the suggestion that major development issues should go before the courts, instead of the Land Use Commission. This argument is advanced on grounds that the cost would be reduced - an argument that overlooks the cost to taxpayers of paying judges and courthouse staff - and that the complexity would be more fittingly tried before a judge. Once more, we disagree. The Land Use Commission can be equated to a jury - and it is one of the oldest cornerstones in our judicial system to try matters before a jury. While it is true that many civil matters do not involve a jury in this province, we do not think members of the judiciary would normally be any more conversant on land use planning intricacies than are members of the Land Use Commission. Indeed, we suspect that after presiding as a tribunal on several land use disputes, members of the Land Use Commission develop a particular expertise in the matters before them. In addition, the Land Use Commission offers advantages over the courts, which are in the "business" of dispute resolution through fact determination and the application of princples of law to these facts. The Commission, on the other hand, can hear opinions, both from experts and from ordinary citizens. This is an important factor in many land use disputes. Land use dissatisfacction and controversies, in our view, will only be increased at the grassroots level if this element of public participation is lost. To have an appellant tribunal comprised of "laymen", able to call upon legal advice to ensure application of the rules of natural justice and to counsel on more technical issues, is, in our opinion, working most satisfactorily and we are not prepared to recommend any change in this regard.

However, we are of the view that the Land Use Commission should function solely as an appellate body, unencumbered with other responsibilities that could, on occasion, leave it open to a change of bias or a perceived conflict of interest in its adjudication as an appellate body.

We have directed our deliberations to the many elements involved in the composition of the Land Use Commission. The Commission might function more efficiently if it selected panels to hear matters as, for example, the Labour Relations Board does. Thus, for example, three members (or even one) could adjudicate on the more routine cases. While more efficient, however, such a system could impair the Commission's current level of public acceptance. Members of the public with a land use dispute might resent being told their problem was so "routine" or "minor" that they would not receive the same treatment as a "major" case, for disputes over land use that involve petty squabbles or few dollars on a relative scale may loom large to the participants. Moreover, the present system allows all members of the Commission an opportunity to develop more ongoing awareness of issues throughout the province during the tenure of their appointments. For these reasons, we are reluctant to tamper with a model that has worked well in the perception of the public.

We acknowledge the concern expressed by the former Executive Director in relation to the representation of interests found on the Commission. In particular, a more concerted effort should be made to have future appointments reflect a stronger municipal experience.

We are also of the view that attempts have been made to undercut the jurisdiction of the Land Use Commission in its appellate role. These attempts must not only cease, they must be reversed. Moreover, the appellate function of the Land Use Commission must be expanded to give it authority as a final tribunal for hearing land use disputes evolving from municipalities which, at present, are not subject to the jurisdiction of the Land Use Commission. Finally, in the exercise of its appellate function, the Land Use Commisison must have the necessary powers both to impose conditions on landowners so that commitments made by landowners in the course of the hearings are fulfilled and to enforce these conditions to ensure compliance in the long term.

Accordingly, we recommend

- **THAT the Land Use Commission retain its present role as an appellate body.**
- **THAT this role be extended to allow the Land Use Commission to operate as an appellate body from land use decisions made by all municipalities in the province.**
- **THAT any and all legislation and policies aimed to excluding the Land Use Commission from adjudicating on land use issues including environment issues - be repealed.**
- **THAT future appointments to the Land Use Commission endeavour to provide a broader representation of socio-economic interests, including persons with previous experience or interest in municipal matters.**
- **THAT the Land Use Commission be given the power to impose conditions on its approvals and the means to ensure conditions are met.**
- **THAT the Land Use Commission be given power to suspend a building permit until appeals have been exhausted.**
- **THAT the Land Use Commission be given the power to issue demolition orders.**

A second agency of government, long involved in land use in the province, is now known as the Agricultural Development Corporation, but was known as the Land Development Corporation during much of our tenure as a Royal Commission. The Prince Edward Island Land Development Corporation was a Crown Corporation established in 1969 under the auspices of the *Land Development Corporation Act 1969*, c. 40, s.1. The Corporation opened offices in April of 1970 and, prior to the repeal of that legislation, its mandate was set out in the following terms:

> The objectives and purposes of the Land Development Corporation were:
>
> a. to assist the agricultural industry;
>
> b. to acquire, develop and improve land;
>
> c. to make land available to farmers;

d. to enable consolidation of farm lands;

e. to provide credit to farmers for land acquisition;

f. to acquire, develop or improve land for such purposes including agriculture, forestry, wildlife, fishing, industry and tourism and generally to advance the interests of the people of the province in the economic and efficient use of the land comprising the province, and without limiting the generality thereof

    i. to preserve, develop and hold agricultural land for agricultural and farm uses,

    ii. to preserve, develop and hold greenbelt land in and around urban areas, streams, ponds and fragile habitats, and

    iii. to preserve, develop and hold lands having desirable qualities for urban, industrial, recreational, forestry and wildlife capabilities; and

g. generally to advance the interests of farmers in an economic and efficient manner in the province.

The formal objectives and purposes were translated into a practical working policy objective to "conserve, develop and assist in improving the use of land in Prince Edward Island in relation to its capability and in accordance with the public interest, both now and in the future but with a primary objective of consolidating good agricultural lands for the purpose of increasing farmer and agricultural sector income".

The mandate of the Land Development Corporation was extensive. In exercising that mandate over the twenty years of its existence, the Corporation has had a major influence on land in Prince Edward Island. We understand that by 1989, *some 188,758 acres had been purchased by the Corporation since its inception; 13.5% of the Island had passed through the hands of the Land Development Corporation!*

In its initial years the Corporation acted largely as a land purchasing and land banking agency. At that time there was very little market for farmlands; demand was almost nil. An aging farm population occupying small farm units in a stagnating agricultural economy was the Island norm. By purchasing farms, allowing flexibility of payment programs (cash sale or annuity) and initiating attractive lease-to-purchase opportunities for neighbouring or new farmers who wanted to expand, the Corporation stimulated the agriculture industry and created a market for farmland while allowing older farmers to retire with some financial security. The initial popularity of the Corporation's program was evident in the 342 properties that were purchased, some 40,300 acres, in the first two years of operation.

Much of the land purchased by the Corporation was not of good agricultural potential. The Canada Land Inventory indicated it to be less than Class 1 to 3 agriculture capability. Rather than re-offering this marginal land to farmers, a system of "leakage" of Corporation-owned properties to appropriate government departments was developed. Management responsibility for properties with high alternative capabilities was transferred to the appropriate agency: forestry, tourism (parks), fish and wildlife or community pastures. In the 12 years from 1972 to 1983, 46,950 acres were transferred to forestry, 9,308 acres to fish and wildlife, 6,647 acres to tourism and 7,032 acres to community pastures. While total management responsibility was assumed by the appropriate agency, legal title remained with the Corporation.

The significance of this "leakage" program to Prince Edward Island should not be overlooked. In a province with virtually no Crown lands compared to the rest of Canada, committing this acreage to government agency management is significant. *As a result of Federal-Provincial cost-shared "leakage", 69,937 acres or 5.0% of the Island has changed from private ownership to crown agency control.*

Within its mandate, the Land Development Corporation was used by government as the purchasing agent for some specific lands for government management. All forestry lands were purchased "passively" - that is, they were acquired if offered to the Corporation; they were not actively sought by the Land Development Corporation. In some specific instances sensitive properties of high value to fish and/or wildlife populations were actively sought for purchase by the Corporation. The same situation existed with regard to potential park or recreational properties. Community pasture development was undertaken only in areas where farmers expressed a need and developed some organizational infrastructure.

In 1972, when it was still a fledgling organization, the Land Development Corporation made a submission to the former Royal Commission on Land Use. Although still in a developmental stage, the Corporation pointed out the role it might play in land use matters in the province. The opportunity to act as an agent to purchase, maintain and administer provincial lands, resolve land use conflicts, and develop tourism, forestry and wildlife lands were all noted as within the mandate of the Corporation, as was a role in limiting land sales to non-residents. Throughout the intervening period the Land Development Corporation has played some role in most, if not all, of these areas of land use and management.

From 1970 to 1983 the Land Development Corporation purchased land from anyone wishing to sell at an acceptable value for the property. Once the purchase was made, the land was "leaked" to the appropriate agency, if that was deemed its best use, or it was placed into inventory and made available to the farm community. Decisions on eligibility to lease or purchase Corporation property were based on an applicant's present or planned farming activity, proximity to the property and several other associated criteria. The normal agreement was a five-year lease with an option to renew for a further five years or to purchase at the value of the property at the time of commencement of the lease. During this period the Corporation was extremely active. Between 22,000 and 50,000 acres of land were handled annually through purchase, sale, lease or leakage activities. Staff numbers reached a high of 20 persons. In the 13 years to 1983, over 1,800 properties comprising 161,000 acres were purchased by the Land Development Corporation.

The period from 1981 to 1983 was marked by some major policy and activity changes in the Corporation. External influences - the ending of the Development Plan, a sharp drop in the inflationary increases in land values, and violent fluctuations in some farm commodity prices - caused a re-evaluation of the role of the Land Development Corporation. As a result, the leakage program was halted, land banking activities were stopped, and staff was reduced by 40%. The Corporation shifted from being a land banking and social rural development agency toward becoming a farm financing institution.

From 1983 onwards, we understand that the only purchases made by the Land Development Corporation have been what might be termed "set-up" deals. A purchaser, upon becoming aware that a property was for sale, would approach the Corporation asking it to buy the property. If the property was satisfactorily priced and the purchaser met the agricultural and financial requirements, the Corporation bought the property and leased it to the potential purchaser on a five-year lease with an option to renew or purchase. The "set-up" deal originated as a method to allow the Corporation to play a role in the family transfer of farms. Prior to this policy approval, if a parent wanted retirement income from the farm but wanted to pass the farm on to a son/daughter, it could not be guaranteed that the child would be able to purchase the property, should the parent choose to sell it to the Corporation. With the deal pre-arranged, parents were assured a retirement income and the child was able to retain the family farm on a lease with an option to purchase. This method of assisting in the financing of farm transfers was deemed highly successful and was expanded beyond inter-generational exchanges. (Now it is the major method that the successor corporation uses to carry out its mandate.)

The role of the Land Development Corporation became something far different than its original one. Over a twenty-year history it evolved from a land banking and agricultural social development agency to a farm financial consultant and farm property financier. In its closing days as the Land Development Corporation (and now as the Agricultural Development Corporation) the Corporation principally acted as an intermediary in the transfer of farm lands through the lease-to-purchase agreement. In this activity it could be said to be something of a "farm community safety net". In November, 1987, this role was broadened by Executive Council approving a "Lease-back-to-Vendor Program", which in its simplest form, allowed a farmer in danger of being forced into bankruptcy, but who was perceived to have the potential to remain viable, to sell all or a portion of his/her farm to the Corporation which would then lease it back to the farmer on a five-year renewable lease with an option to purchase. This program has allowed the farmer to restructure his/her operation and still remain active in the agriculture industry on the original property. In the first eighteen months of the program the Corporation received 29 applications, approved 9, declined 9 and had 11 others pending receipt of more information.

Between 1983 and 1990, the Land Development Corporation purchased 293 farms comprising 31,873 acres. None of this land has been "leaked" for other usages. As of March, 1989, the Corporation had 591 active leases comprising 40,336 acres, which amounts to 2.9% of Prince Edward Island. In addition there were 10,114 acres in inventory. Of the total 293 farms purchased since 1983, 27 (9.2%) have been inter-generational (parent son/daughter) transfers. The others have resulted in the establishment of new farmers or the expansion of existing operations.

The Land Development Corporation, in practice, did not assume responsibility for land and land use other than financial and legal control. There were no conservation or lands protection measures such as covenants etc. on leased or mortgaged properties. (The exception to this was that, as of 1977, in compliance with section 2(b) of the Land Identification Regulations of the *Planning Act,* land sold by the Corporation could be identified as non-development land.)

The single most important tool for land development and manipulation the Land Development Corporation had access to was the lease. We understand that the ability to purchase land and lease it to a client was an ability unique to the Land Development Corporation amongst farm-financing institutions, public or private, and that this ability has continued with the Agricultural Development Corporation.

The lease has had a marked effect on land and land use in Prince Edward Island since 1972. The normal operational procedure was (and is) for the Corporation to purchase a property, make necessary improvements and lease it to an appropriate farmer for a period of five years with an option to purchase or renew the lease for another five-year period. The Corporation had access to relatively inexpensive loans during its existence and thus was (and is) able to offer lease rates well below what any other lender could afford. For example, we understand that lease rates in the 1988-89 fiscal year varied from 9.14% to 11.04% while prime bank rates were from 9.75% to 11.85% and operating loans were well in excess of that. Thus, a farmer operating under a Corporation lease could have control and use of a farm operation valued at $120,000 for approximately $10,900 per year. We understand that the average lease value in 1988 was $30,400; this would cost the farmer $2,778 per year.

A further advantage to the farmer was (and is) that upon approval, he/she could (and still can) have the lease with no down payment and no payment for the first year other than acquisition costs. This allowed a farmer to actively use the farm on a simple lease basis for at least the first five years and use whatever funds he/she had for capital or operating expenses. At the end of the five-year period the farmer could purchase the property on an Land Development Corporation mortgage with a 25% down payment. *The price for the property was (and is) its value at the beginning of the lease period.* Should the farmer not want to purchase, he/she had (and still has) the option to renew the lease for another five-year period.

This unique option has had the effect of keeping many thousands of Island acres in active agriculture, land that otherwise might well have gone to less desirable uses. Many farmers, who either could not have expanded as they needed to in order to remain viable or who could not have afforded to pass on the family farm to the next generation, have been assisted by the lease option. It has also functioned as a new farmer program in lieu of any other such program.

While absolute numbers are impossible to obtain, it is reasonable to assume that without the Land Development Corporation and the lease option that is an important working part of its mandate, the land use patterns that have evolved in Prince Edward Island in the last twenty years would have been far different. It has allowed many farm operators to expand their operations in an economic and systematic manner. It has allowed many new farmers to use valuable limited capital for other farm development needs while becoming established. It has allowed many farms to pass from one generation to the next while allowing for a secure retirement income for the elder generation. It has re-organized and re-evaluated the best land use options of many thousands of Island acres. One of the major design aspects of the Corporation's function was to level out to some degree the highs and lows of demand for agricultural land, and in that regard it has been successful.

We understand that the Land Development Corporation noted an interesting, and to some degree alarming, trend in the approach to agricultural land control patterns through the length of its existence: the importance of actual ownership of the land being used decreased. From 1972 until 1980, essentially every farm that was leased with a purchase option was purchased at or before the end of the five-year-lease period. In addition, many properties were purchased directly out of inventory. Since 1980, the number of purchase options being exercised steadily declined. Either the lease had not been renewed, with the land going into inventory, or the lease had been renewed for another five-year term, or the account was in arrears. This lack of interest or financial ability to purchase farmland when the purchase option was available had the effect of adding steadily to the agricultural land in the province that is in the hands of the Land Development Corporation. For example, while land in inventory remained generally constant with some slow decrease (12,760 acres in 1983 to 10,090 in 1989), holdings that were under lease increased from 21,510 acres in 1983 to 40,178 acres in 1989. Assuming about 500,000 acres of cropland in the province (CLI Agriculture Classes 1-3), this had the effect of making the Corporation titleholder to in excess of 8% of the agricultural cropland in the province

In a province with the unique attitude to land ownership such as exists in Prince Edward Island, so strongly reinforced by the historic disdain for tenant farming, the accelerating trend of Crown Corporation land ownership and farmers operating on leased land is cause for considerable concern. Should present trends continue unabated, only about 30% of the land being purchased today by the Corporation will have the purchase option exercised on it five years hence. This trend is also alarming in view of the links between land ownership and stewardship we discuss elsewhere in this report.

While the Corporation has been active in farm land financing and redistribution, it is very limitedly involved in land management and/or conservation. This was brought to the attention of the 1973 Royal Commission on Land Use and has been mentioned in many of the briefs presented to us. We understand that the *preliminary results of a study commissioned by the P.E.I. Soil and Crops Association indicated that in a significant number of cases, land leased by the Land Development Corporation is being inadequately managed by the leaseholders. That study found that 20% of lands leased from the Corporation had no lime applied, 30% was in grain or row crops for the entire lease period with no hay or legume crops in the rotation, and 25% of properties exhibited obvious erosion problems.* Although we have not been made aware of the final results of this study, these preliminary findings are an indication of concern.

It is a generally-held view that Crown and Crown Corporation-held lands should be *showcase examples of good land use management.* The Provincial Conservation Strategy recommends such a course of action. There is no other property owner with the potential to deal with soil erosion, stream enhancement and other conservation issues and make as dramatic an impact as the Corporation.

Of the presentations made to us by the public, one-quarter of them referred specifically to the Land Development Corporation or areas within its mandate. In many instances there was some confusion between Crown lands, lands managed by government agencies or departments (leaked properties) and lands owned by the Corporation. It was assumed in many instances that all lands not specifically "government" (highways, buildings) and not privately-owned were the responsibility of the Land Development Corporation. In actual fact, only those lands in inventory (about 10,000 acres) are considered to be within the day-to-day management responsibility for the Corporation. Nevertheless, this level of attention directed at the Corporation demonstrates the level of public concern and expectation. Government cannot expect the private sector to adopt a land stewardship stance if it is not prepared to do so itself.

Throughout other portions of this report, we have emphasized that the future direction of the Corporation must be more conservation and "land husbandry" oriented toward lands under its control. The Agricultural Development Corporation must accept responsibility for land management and conservation steps on all lands it leases or holds in inventory. In addition, such measures must be instituted into mortgages and sales. High visibility holdings could be the first steps in this regard. Use of covenants, tightened agreements, more restrictive criteria to qualify, increased on-site inspection, counselling, legislation, increased funding and education must be considered as possible vehicles to carry such a program. Further, it must ensure that other government agencies to which it has leaked lands exercise proper management; in short, the Corporation must accept the role of the wise and prudent landlord.

In addition to the general public concern about the Corporation's negligence as a land owner, we have concerns in relation to abuses of the Corporation's programs. While the leasing arrangements have had many positive effects, tighter controls need to be utilized to ensure land flowing through the Corporation is not used for speculative purposes. The lease with an option to purchase, allowing farmers to purchase land at a set price at the commencement of the lease, allows the Corporation's clientele to play in the real estate market at taxpayers' expense. If the price of land has risen in the interim, exercise of the option represents a windfall gain for the purchaser. This may be justified in terms of assistance to participants in the industry - but it cannot be condoned as wise use of public resources if the purchaser then "flips" the property to another owner. Along the same lines are abuses of the system where Corporation lands are acquired so that the purchaser can subdivide the property and re-sell lots for residential or cottage housing. While such abuses may be only isolated examples, there are effective measures which can prevent them from occurring.

In 1988, the Government announced its intention to amalgamate the Land Development Corporation with the Crop Insurance Agency. A new *Agricultural Development Corporation Act* received second reading in the spring session of the Legislature, but died on the Order Paper with the election call. This was re-introduced at the 1990 sitting of the Legislature. While the new legislation is similar in intent (and in many cases identical) with respect to mandate, purpose and objective of that originally empowering the Corporation, many new responsibilities have been added. The objects and purposes of the new Corporation are set out in Section 7 of the *Agricultural Development Corporation Act,* S.P.E.I. 1990, c. 1, as follows:

> 7. The objects of the Corporation are
>
> (a) to advance the interests of the agricultural industry;

(b) *to promote rural development;*

(c) to provide programs of agricultural insurance;

(d) to provide financing for the purchase or leasing of properties;

(e) to facilitate the establishment of farm units;

(f) *to acquire, develop, or improve land for agriculture, forestry, wildlife, fishing, industry and tourism, and generally to advance the interest of the public in the responsible use of the land, and, in particular*

  (i) to preserve, develop and hold land for agricultural and farm uses,

  (ii) *to preserve, develop and hold green belt land in and around urban areas, streams, ponds and fragile habitats,*

  (iii) *to preserve, develop and hold lands having desirable qualities for urban, industrial, recreational, forestry, and wildlife capabilities, and*

  (iv) *to preserve, develop and hold land in the best interests of rural communities,*

(g) *to promote the development of rural areas;*

(h) *generally to provide programs to promote the interests of farmers and rural communities.* [Emphasis added.]

Portions of Section 7, which we have delineated, suggest that the Corporation now has objectives that encompass a much wider scope than the Land Development Corporation. In addition to providing a crop insurance service for the agricultural community, the *Agricultural Development Corporation Act,* despite its name, seems to imply the Corporation is to assume a new role in "rural development". As we indicated in our discussion on "Rural vs. Urban" issues, "rural" is no longer synonymous with agriculture. We have assumed that recognition was implicit in the choice of words used to determine the role of the new Corporation in assigning tasks for it in this report, including the role we have recommended for the Corporation in "Rails to Trails".

Other provisions in the legislation leave scope for the Corporation to resume its original role as a true land banking agency. We would applaud such a move. While we recognize the restraints of financing government faces today may curtail the extent to which land banking may be carried on outside of current programs, successful implementation of programs such as land assembly, will require some land banking outside the perimeters of existing programs. Moreover, the current leasing program under "set up" deals is open to abuse beyond the Corporation's control. For example, the Corporation's program may involve it unnecessarily in leasing arragements where the purchase arrangements could be made entirely in the private sector, with financing through lending institutions or by way of vendor-back mortgages.

The recommendations which we have directed at the Agricultural Development Corporation will require that additional resources be made available to the Corporation. While measures that call for greater land stewardship will require additional staff and funding for what, initially at least, will be a challenging undertaking, we can only point to the data in our discussions on "Agricultural Preservation" and on "Soil Erosion and Degradation" to underline the attention and priority needed to cope with these issues.

We understand that all government departments have agreed to review and evaluate their present landholdings. It is quite possible that much or all of the land which is declared surplus will be "deleaked" to the Agricultural Development Corporation for dispersal. In that event, land policies must be examined with great care. For the first time in its history, the province has a reserve of Crown land, as other provinces have traditionally held. Wholesale return of these lands to the private sector would seem to be a move that would negate all that has been accomplished by way of acquiring Crown land over the past two decades. In our discussion on the "Coastal Zone", for example, we propose the establishment of a goal for natural preservation and indicate the sustainable proportion of lands recommended by Brundtland and others. Such factors as this must be a vital consideration in developing future land policies relating to these Crown lands.

The Agricultural Development Corporation, as successor to the Land Development Corporation, is by far the largest single land owner in Prince Edward Island. The Corporation presently holds title to 120,387 acres or 8.6% of the province! While 70,000 acres of that total has been transferred to the management and use of other agencies and government departments, 50,450 acres (3.6% of the province) is still directly in the hands of the Corporation. (Some 40,336 acres of that is leased to farmers, with the remainder being in inventory.) In essence, the Corporation is the province's access vehicle into controlling selected aspects of land use and development through the marketplace.

Accordingly, we recommend

- **THAT the Agricultural Development Corporation be given the resources needed to implement responsible land stewardship requirements; to resume its role as a true land banking agency; and to exercise its mandate on "rural" development.**
- **THAT the Agricultural Development Corporation commence a land management program for all of its properties.**
- **THAT the Agricultural Development Corporation establish itself as a role model for proper land management.**
- **THAT the Agricultural Development Corporation impose appropriate conditions on the sale and rental of its properties to encourage proper land management and preclude both land speculation and fragmentation, including conservation covenants, non-development measures, the acquisition of the right of first refusal to the Crown on any subsequent resale by a purchaser and/or prohibitions against further subdivision by purchasers.**

Chapter 17

LANDSCAPE

Our terms of reference include three provisions calling for our assessment in relation to the "quality of the landscape". Is such a mandate possible to address?

The first impression is usually that "landscape" cannot be assessed for "quality". In simplest terms, landscape is little more - or less - than our geographical surroundings. The quality relates essentially to the visual and aesthetic appeal (or lack thereof) in relation to the setting. Once the old adage "beauty is in the mind of the beholder" is brought forward, it is assumed that the quality of the landscape is such a subjective matter that no standards can be imposed to determine quality or to assess whether the landscape is changing in a positive or negative direction.

Closer inquiry, however, suggests this position is little more than an easy means to "cop out" of an issue which, although not easy to assess, can be addressed. Moreover, our entire legal system is permeated with provisions that call for some subjectivity. A precise, mathematical standard, such as a speed limit, can be spelled out in law but strict adherence to that formula is no defence if road or weather conditions render motoring unsafe at the allowable standard; the acceptable speed limit under such variable conditions then becomes a subjective standard, categorized under the term "reasonable".

There are compelling reasons why both the Government of Prince Edward Island, in the public sector, and the residents of the Province, can and should be vitally concerned about the landscape, not only in terms of preserving its quality but also in terms of grappling with the inherent difficulties of identifying acceptable standards for quality landscape and means to enhance and preserve that quality.

One of the most compelling of reasons for confronting landscape issues is in itself intangible, abstract and immeasurable. The quality of the landscape can have an effect on the quality of our lives in numerous small and sometimes large ways. Who has not, at some time, felt saddened by the change in what was once a favoured place? Who has not felt their spirits lifted by a glorious scene? Who has not been angered when a view has been "spoiled" or "blocked"? We leave a physical location with a memory of its visual impact that may beckon our return, perhaps in very compelling ways or, alternatively, that causes us to vow never to venture into that environment again.

While the effects caused by the landscape on the individual may be difficult to quantify, there is little doubt that landscape issues can and do generate great emotion. The individual who has only memories of Island soil may stand on the deck of the car ferry and view the approaching red shoreline through misty eyes. The community meeting over a proposed change may produce angry residents, totally unmoved by all suggestions to eliminate or alleviate the objections they have voiced, if the plan calls for what they perceive as an unwelcome change to the landscape. On the other hand, there are innumerable situations where the setting alone wakes pleasurable responses. Only those with no sensitivity to their surrounding would not be moved by many scenic Island vistas that have become renowned.

The relationship between the landscape and the individual may not be as subjective or as ethereal as we would expect. One of the most fascinating discussions on the subject appeared in "Encountering the Countryside", a two-part article in the *New Yorker* magazine in late August, 1989. Tony Hiss considered landscape issues, including the interaction between landscape and various forms of human activities. Passages from this piece illustrate the point:

> Recent work in a number of research fields, such as education and health care, has been advancing the regionalist approach by making it clear that certain essential human activities, including both learning and healing, can be enhanced when they take place in a setting that offers people countryside connections in addition to the support systems already in place. By the early nineteen-nineties, it will be possible to see what some familiar small-scale institutional settings will look like once they've been recountryfied, so to speak. In some ways, oddly, they will resemble certain very early photographs of New York City, taken in the mid-eighteen-fifties. In England, a three-year-old national research program - the Learning Through Landscapes project - is underway to investigate how schools can restructure paved and windswept schoolyards to give them a countryside look and so provide "a complete environment for learning". The idea is that "the landscape in which the school stands...can provide a rich and stimulating resource and setting...for learning and teaching."
>
> The study is based on a number of modern, research findings, such as a UNESCO survey of children's needs, which was written about by the late urban planner Kevin Lynch, of the Massachusetts Institute of Technology. Lynch was the first person to write about mental maps and landscape connectedness, and he was about to show that people's interior pictures of their surroundings grow more vague and unreliable when connectedness is taken away from them. In the UNESCO study, summarized in the book "Growing Up in Cities", Lynch compiled interviews with children from Argentina, Australia, Mexico, and Poland about their reactions to their surroundings, and found that no matter where they came from - it might be an inner-city neighbourhood, a provincial capital, or a rural village - "the hunger for trees is outspoken and seemingly universal".
>
> ....
>
> The ideas in a celebrated 1984 study by Roger S. Ulrich, a University of Delaware geography professor, "View Through a Window May Influence Recovery from Surgery", published in *Science*, have been incorporated into the design of a hospital in Newport, on the Isle of Wight, off the southern coast of England. Professor Ulrich, who is now at Texas A & M's College of Architecture, found that over a nine-year period gall-bladder patients who could see a cluster of trees instead of a brick wall outside their hospital window "had shorter post-operative stays" and "took fewer moderate or strong" painkillers.

Even though psychological factors may, in the ultimate analysis, be the single most important reason for probing landscape issues, economic consequences can also be identified. These may be difficult to quantify in many instances, but they are undeniably present. On an individual level, the financial consequences may be enormous and yet these may remain hidden until revealed by hindsight.

Consider, for example, the classic situation of the homeowner, bearing in mind that the purchase of a home is often the largest, single transaction in the lifespan of many individuals. A residence is acquired with the geographical setting being an important, fundamental consideration. Changes in the surrounding landscape determine the future worth of that home. *Indeed, urban zoning was first introduced to provide stability for homeowners, to ensure to some degree the preservation of their landscape. An unregulated landscape offers no such protection.* The homeowner who acquires a property in part because the view is enticing, suffers an economic loss when that view is negatively altered and a windfall when the quality of the landscape is improved. (That the marketplace is able to determine whether the quality of the landscape has declined or enhanced clearly indicates that judging the landscape is not a purely subjective exercise!)

There is a second economic factor, one that operates at the collective level and one that, for Prince Edward Island, is of critical importance. Quality of landscape is worth money in the form of tourist dollars. People will pay to see unique geographical features or particularly attractive settings. The payment will often be an indirect one; it will not usually be in the form of an admission fee at the gateway. Instead, payment is made by way of the travel costs associated with a visit to the landscape. Moreover, during their leisure time, people are willing to travel to pursue activities, that could be undertaken closer to home, if in so doing the more distant destination can offer landscape attractions that are a welcome supplement to other attributes. In these terms the individual property owner who has the ownership and control over the quality of the landscape may not be deriving any direct economic benefit from his asset but the general financial well-being of the public at large profits from the various secondary businesses that are able to offer goods and services to any travellers drawn to the locale for the purpose of the visual enjoyment being offered.

The importance of the tourism industry in the economy of Prince Edward Island means that the quality of the landscape is a dimension that must receive the careful attention of the public sector. Just how much focus must be placed on the landscape can be determined from a number of indicators. The role of tourism in the economy is, in itself, frequently cited in data that suggests it provides an annual injection approaching $100 million into the local economy and an employment market for some 12,000 workers when seasonal and full-time jobs are totalled.

Less prominently emphasized, however, are the findings by the provincial Department of Tourism and Parks showing the relationship between the landscape and the tourist industry. The 1988 Tourist Exit Indicator Survey, at p. 9, shows that 35% of all tourist parties indicated "sightseeing" as the purpose of their trip. Among nine potential responses to the question "what is the main purpose of your trip?", it was "sightseeing" that outranked all others. Undoubtedly it is safe to assume that the 24% who stated "visiting friends/relatives" as their answer or the 41% who selected one of the other responses might include "sightseeing" as a secondary purpose for their trip.

Other data suggests that landscape is a much more crucial component in specific tourism groups. For example, the 1988 Evangeline Region Non-Resident Tourism Survey, prepared by the Department of Regional Industrial Expansion, shows that 83.7% of the tourist parties visiting the Evangeline area said the reason for their trip to Prince Edward Island was a "sightseeing tour".

The reason for the discrepancy is not difficult to pinpoint. The more general "Tourist Exit Indicator Survey" included a spectrum of travellers. In addition to individuals who visited the Province during their leisure, the survey sampled the opinions of former residents and frequent visitors for whom the landscape is not a novelty as well as respondents whose central purpose was in some business capacity. The Evangeline survey would be more reflective of the views of travelling "strangers" whose trip is occasioned by a holiday. As such, it would be a more accurate indicator of the role of the landscape in promoting and sustaining the viability of the tourism industry in its "purest" form.

The data collected by the Department of Tourism and Parks also suggests that tourist operators consistently underestimate the role of landscape as the foundation on which their industry rests. The 1988 Tourist Operators Survey presented the findings derived from a survey of 160 tourist operators in all regions of the Province. Asked what was perceived to be the key attractions to the Island, only 15.4% of the respondents indicated "scenic areas". Nearly one-quarter of the operators (22.0%) felt "P.E.I. beaches" was the key attraction, although only 14.5% of tourist parties claimed the purpose of their visit was "outdoor recreation sport". When asked to name the key attractions in their area, tourist operators placed "coastal scenic areas" even further down on their lists. Only 26 of the 332 respondents identified "coastal scenic areas" as the key attractions of their region, even though the survey acknowledged that "the sample of respondents is weighted heavily in favour of rural operators".

Because of the styling of the questions in the various tourism surveys it is not possible to make cross comparisons and draw precise conclusions. For example, tourist parties who indicated the purpose of their visit was "sightseeing" may well have intended their answer to mean that they were interested in both landscape and attractions such as Green Gables or that they were interested solely in the landscape features connected with beaches. Similarly, those operators polled in that survey may have felt that by identifying "beaches" they were identifying one of the more unique features of our scenic areas. These difficulties in interpreting the data are to be expected since we were using information for our own purposes that was not compiled in contemplation of the goals of our examination. Nevertheless, the data is suggestive that those most directly involved in the tourist industry are not fully appreciative of the central resource on which they very foundation of their livelihood exists.

Certainly the importance of the landscape has been demonstrated in studies done elsewhere. While the province of Saskatchewan is not perceived to be noted for scenic attractions, the 1985 Task Force on Rural Development in that province cited data that showed rural sightseeing as "one of the most dominant activities which pleasure travellers pursue on a trip". Indeed, among the 19 major activities from which to choose, it ranked as the number one attraction for tourists from four of the seven "markets" included in the survey. Among all of the seven jurisdictions from which travellers originated, the only other travel activity that could match or exceed the popularity of rural sightseeing was "Historical Sites/Museums". (See Appendix D of Volume II.)

Closer to home, the New England States have been American trendsetters in linking landscape preservation with tourism. An initial hint of these efforts comes from the Tony Hiss article at pp. 60-1 (*New Yorker*, August 28, 1989) where the author describes the state landscape inventory prepared for the Commonwealth of Massachusetts:

> The first step involved giving specialness official recognition, as embodied in the Department of Environmental Management's "Massachusetts Landscape Inventory", a two hundred and sixty-eight page book published in 1982. The follow-up step, . . . , was launched in 1988, when the Center for Rural Massachusetts brought out the "Design Manual", with its local strategies for protecting one of the distinctive landscapes previously identified in the "Inventory".
>
> The "Massachusetts Landscape Inventory", which surveys five million acres of land, was put together mainly by three and a half people - Neil Jorgensen, a geologist, Mark S. Finnen and Harry L. Dodson, two landscape architects, and Bob Yaro, as a part-timer, shuttling between projects. The group was able to avoid making invidious comparisons - deciding, say, whether the Berkshires are more beautiful than Cape Cod - by a simple device. They divided the state up into six "physiographic regions", large areas with broadly similar landscapes and cultural characteristics, and then looked for the best landscapes in each of them. . . . Massachusetts had a history of inventorying its scenic features - an earlier survey had been made in 1929. But the 1929 report, which led to protection for Mt. Holyoke and other outstanding natural features of the state, largely ignored its working landscapes, though the state was then still forty percent farmland. Farmland seemed an endless resource in the nineteentwenties, and besides, it was considered to be just "ordinary" scenery.
>
> By the early nineteen-eighties, the situation had changed: three-quarters of the farmland in the state had disappeared between 1950 and 1980. The new inventory-takers therefore knew they had to work fast. But they found that they had two obstacles to overcome. They could turn to knowledgeable local people for hints about where to get started, but even the most concerned local people tended to be hazy about sites a few miles away from their own villages. So the surveyors had to weave together a series of local suggestions in order to get a complete picture of the distinctive qualities of a region. Also, it turned out that, even in the nineteen-eighties, *existing American scenic-assessment techniques concentrated exclusively on natural features, such as mountain ranges and waterfalls; farmland, it seemed, was still officially an "ordinary" commodity.* So Jorgensen, Finnen, Dodson, and Yaro *adopted a scenic-assessment method used by the Countryside Commission of Scotland - a technique developed to give "a central position" to landscapes that have "undergone centuries of human influence",* according to the "Inventory". The Scottish work could be welcomed in New England, according to the completed "Massachusetts Landscape Inventory", because "while the primeval forests of Massachusetts were undoubtedly beautiful environments, today's second-growth forest provides only limited internal views in most areas"; that is, as the "Inventory" went on to explain, "in a region of generally subdued topography, second-growth forests tend to limit visual quality. If cultural, agricultural, and historic landscapes did not exist in Massachusetts, scenic areas would generally be limited to the seashore, lakes, rivers, wetlands, and the view areas of sharp relief".

> Working with the tips provided by local landscape authorities, the survey team poured over topographic maps published by the United States Geological Survey, looking for basic information they could spot-check in the field, such as changes in elevation, whether the land was open or wooded, and the likelihood of coming across vistas. The maps also helped them rule out areas with very little potential. Then they drove around the state looking at everything they had heard about or found on a map and, back in the office, prepared new maps, on which they ranked as "distinctive", "noteworthy", or "common" the landscape features in each of the physiographic regions. When they totalled their findings, four percent of the land in the state, about two hundred thousand acres, seemed to deserve a "distinctive" rating, and five percent, or a quarter of a million acres, could be considered "noteworthy".
>
> The rankings didn't change the legal status of any Massachusetts landscapes, although the Department of Environmental Management at once adopted the "Massachusetts Landscape Inventory" as a guide for future purchases of state parkland. [Emphasis added.]

While this effort did nothing to preserve the landscapes in any regulatory way, Hiss pointed to a number of examples where the Inventory operated as a deterrent, preventing the use of sites for military antennas for instance.

The project was extended throughout New England, as Hiss described at pp. 58-9 (*New Yorker*, August 21, 1989):

> [T]he six-state New England Governors' Conference. . . agreed to put together a list of all the unprotected open spaces and working landscapes within the region that New Englanders, by consensus, consider special places that help create the distinctiveness of their particular corner of the country - some of the peaks in New Hampshire's White Mountains, for instance, or farmland on Block Island, ten miles off the Rhode Island coast. *Now that the list is complete,* it will be used as a guide to regional identity, and *can serve as part of the framework for future development throughout New England. The six governors have all endorsed the preservation of every place on the list.* So far, no other region in the country has even taken on the job of identifying the places it has that function as region-makers, and Bendick hopes that the two-part regional-identity strategy that New Englanders have now devised - *a commitment both to catalogue their own assets completely and, in the future, always to build around these characteristic places instead of on them* - will, as it is put into effect over the next few years, disclose itself to be a simple-to-follow procedure that other regions can adopt during the nineteen-nineties. [Emphasis added.]

More recent developments were outlined in "Tourism and Land Conservation - A Common Agenda" by Dennis Robinson - an article that appeared in the January, 1990 issue of *Land Lines*, the newsletter for the Lincoln Institute of Land Policy. Robinson, the Director of Education for the Institute, wrote:

> The New England landscape and its natural resources both attract visitors and demand protection from overuse. Mountains, coastlines, and the rural countryside define the New England character. "Taken together, these places are a source of recreation and escape from the everyday for New England's people. They are [also]

a foundation of a multi-billion dollar tourism industry," reports the New England Governors' Conference, Inc. This is the symbiotic relationship between tourism and land conservation. Recently, these often-competing interests have agreed that new policies are needed to manage New England's unique landscapes. What should these policies be? . . .

Exchanging ideas between land conservation and tourism professionals to address this question was the goal of a conference on Tourism and Land Conservation in New England: A Common Agenda, held in November in Portland, Maine. The conference, jointly sponsored by the Lincoln Institute of Land Policy and the New England Governors' Conference, Inc., provided a forum for 134 representatives of state and local tourism and economic development agencies and land conservation groups to begin discussions leading to more effective working relationships.

The November conference is the latest step in a program begun in 1987. At that time, the six New England governors adopted Resolution No. 50, recognizing the need for regional cooperation in developing land conservation strategies. *The Resolution called for an inventory of areas worthy of protection and a strategy for preserving those areas.* Defining a working strategy was the focus of the first joint conference by the Lincoln Institute of Land Policy's Study Group on Land Conservation in New England and the New England Governor's Conference, Inc., held in 1987. A nine-point regional strategy was developed through this effort. Adopted in 1988 by resolution of the Governors' Conference, the program called for this latest high-level meeting of tourism and land conservation representatives to discuss common goals and strategies for protecting New England's heritage. . . .

How can a region sustain and expand its lucrative tourist industry without destroying the very resources that attract visitors?

In what ways can tourism supplement the incomes of people who make a living from the land?

How do the key concerns of the tourism and land conservation interests relate to each other?

These questions frame the issues addressed in the New England conference.

According to John Hunt, Distinguished Professor of Travel and Tourism at the University of Massachusetts at Amherst, tourism generates a significant benefit to the New England economy. "Residents or visitors travelling 100 miles or more from home are spending $15 billion in the region". While some traditional businesses and industries have experienced a decline over the past ten years, the services sector, including services critical to supporting tourism, has grown. Robert Bendick, Director of the Rhode Island Department of Environmental Management, . . . warned that "unless the tourist industry thinks it can sell trips to see shopping malls, traffic jams and other people's pre-engineered summer houses, it ought to share in an agenda to protect..." the natural resources on which it relies.

Both land conservationists and tourism proponents have begun to re-examine a cooperative link that dates back at least to the 1972s. Hunt recalled, "The roots of the national park system are solidly grounded in tourism". *Studies have shown that the landscape characteristics and environmental integrity of destinations rank among*

> *the most important reasons for travellers choosing a vacation area.* Likewise, conservationalists have seen that efforts in conjunction with the tourism industry can be helpful.
>
> *Some of the issues and challenges involved in this discussion are unique to the region. For example, only five percent of the land area in New England is owned by federal and state agencies, compared to 49 percent in the northwester U.S., according to the U.S. Bureau of the Census. This raises questions regarding the use of private property for New England's tourism operations. Ownership tends to be in relatively small parcels, which means that many individual land owners and varied existing uses are affected by any one tourist area. Also, the New England landscape is a working landscape on which farmers and fishermen depend for their livelihood.*
>
> Other issues are more universal. In the recent past, tourism and conservation interests were polarized and seemed incompatible; there is a need now to overcome this obstacle. An important step is to define what conservation means with respect to human use of open spaces. Another challenge is to develop solutions to address site-specific problems individually. *Large-scale land management policies can oversimplify land use issues and lead to disagreement, whereas solutions for smaller parcels may be found more readily. . . .*
>
> Some important substantive agreements were reached at the conference and subsequently reported to the New England governors:
>
> Consider using some portion of tax revenues from tourism to help control the adverse environmental impacts of tourism or to provide incentives for preservation of certain areas.
>
> *Use state-wide comprehensive planning laws, with specific focus on tourism issues, to ensure that local plans respect important sensitive areas and to distribute tourism across the region.*
>
> Provide education and orientation for tourists to enhance their sensitivity to the consequences of their activities.
>
> Continue research and development of information on "successful" tourist areas; develop profiles to define the preference of tourists and the status of threatened open spaces.
>
> Continue the dialogue between tourism and land conservation interests; increase representation of the tourism industry at these forums. . . .
>
> Through the continuing New England land conservation programs, the Lincoln Institute has been in the unique position of providing objective guidance in the definition and review of these issues. Our partnership with the New England Governors' Conference, Inc., has provided access to the perspectives of the highest level state policymakers. Continued Institute involvement in the exchange could focus on the collection and analysis of data on land use patterns in tourism areas and on discovering new policy options for direction tourism activities. As summarized by Maine Governor John McKernan at the conference, "Tourism needs to be managed as well as promoted." [Emphasis added.]

It is critical that both the Province and the public realize our landscape is as vital to tourism as our land is to agriculture. Indeed, the links are quite intricate.

One of the most common classification systems used to identify landscapes comes from ideas put forward by the noted American forester and planner, Benton MacKaye, whose classic text on regional planning is still canvassed for concepts some 60 years after it was published. As Tony Hiss recalls, MacKaye identified "three basic 'elemental environments' ": natural landscapes, working landscapes and cities - or, to use his terminology, "The Primeval", "The Rural", and "The Urban".

The term, "working landscape", or its equivalent is one we have utilized throughout our report. It is a term best understood by hearing again from Tony Hiss (*New Yorker,* August 21, 1989, pp. 44-5):

> Working countryside; working landscape; managed landscape; humanized landscape; historic landscape; ancient landscape; cultural landscape; heritage landscape; these are all terms that have been coined over the years by botanists, landscape historians, sociologists, historical ecologists, and other specialists who have studied both the history and the future of the countryside in order to distinguish two different kinds of terrain - natural landscapes, which, in this very broad definition, are those parts of the countryside which human beings haven't altered or interfered with, and landscapes whose function and look, or character, or feel, have been shaped over time by sequential, ongoing human activities as much as by natural processes. The latter are perhaps most commonly referred to as working landscapes.
>
> The working landscape/natural landscape distinction is admittedly a slightly tricky one. It doesn't necessarily mean just talking about open country, on the one hand, and tangled, overgrown, impenetrable country, on the other. Some landscapes that might at first glance look like natural landscapes, such as our national forests, are really either working landscapes, where all the trees are planted crops, or a blend of natural and working landscapes, and, conversely, some large areas of completely open countryside . . . are naturally occurring countryside formations.
>
> Despite this complexity, the idea of discussing countryside under two different headings has helped turn people's consideration toward some special qualities maintained by rural regions that aren't wild and aren't always spectacular, and might otherwise have seemed to be only plain, ordinary countryside. It's an idea that is still not fully formulated; a new college-level landscape-architecture textbook points out, "The profound importance of the rural and agricultural landscape has only recently received much attention." Some of the environmentalists who have started studying working-farmland landscapes take a special interest in the soil itself; they remind Americans that, for instance, only eleven percent of the surface of the earth is rich, productive farmland, and that, as a recent Sierra Club book, "Soil and Survival", puts it, "an exceptionally large part of this eleven percent exists here in the United States." . . .
>
> In a working landscape, according to John Stilgoe, a Harvard landscape historian, "terrain and vegetation are moulded, not dominated." As a consequence, he maintains, when you enter such an area you're always in the presence of a "fragile equilibrium between natural and human force."

Others have considered the working landscape in partnership terms, where nature and people work together on the land. Under such an analysis, the abandonment of farmland means the partnership has ceased to function; the landscape is no longer a working landscape and begins an evolution towards the natural landscape. We are of the view that it is important to understand this concept of working landscape, to appreciate that the countryside involved in a working landscape is not idle land waiting for development. The working landscape is already developed. Moreover, a working landscape at its best is reflective of the healthy vitality of our primary resource sectors in the economy.

The 1973 Royal Commission referred to the public attachment to Island beaches and, elsewhere in this report, we note that many people view the forests as being a public resource. It was obvious from our hearings that many Islanders regard our landscape, particularly the countryside landscape, as a public resource, one that entails a public partnership.

Such a view of the landscape is not unique to the province as Hiss explained in his article:

> For almost the last two centuries, the Europeans have been developing another idea about partnership landscapes - that *the sense of partnership created in such areas is a public value,* even if it may have been developed by the actions of innumerable private individuals.
>
> ....
>
> The subsequent working out of this thought has led to several further ideas, and also, in England and Wales, to a national system of protected working landscapes, created "for the nation's benefit" after the Second World War. One of these ideas has to do with "the right to roam", as it is sometimes called - something of a modern form of the pre-medieval idea of the common: a jointly-owned, intricately-used landscape. The old idea was that the ownership of property was never all of a piece but had to do with distributing a bundle of land-use rights - the right to farm, for instance, and the right to graze animals, and the right to gather firewood, and a right of way - among the various members of a local community. And any one use had to respect the other commonly established uses, and not diminish or trespass on any of them. In modern "common" thinking, the right to roam - a right of access to the country's landscapes - is distributed among the citizens of a whole country, and remains theirs even when different pieces of property change hands, but must itself be carefully exercised under some kind of partnership agreement, so that it doesn't interrupt or threaten a landowner's guaranteed right to privacy.
>
> A second new idea also has to do with public value; simply put, it warns that *the sense of partnership available in a landscape can be undermined, or cropped, by changes that come to an area.* "Cropping public value" might mean, for instance, building in a countryside region a house that gives its new owners a spectacular view but destroys the views previously enjoyed by the other houses in the area. In this case, *part of a public value would have been stripped from a landscape and converted into cash value for private gain.* [Emphasis added.]

There is considerable pride amongst Islanders about the beauty of the Province. Throughout our hearings, the work of volunteer organizations, such as the Rural Beautification Society and the Women's Institute, were cited as positive examples of groups working actively to enhance our landscape in many ways. A former Island premier, Hon. J. Angus MacLean, recalled his experiences in meeting foreign ambassadors and other dignitaries visiting the Province: they unfailingly spoke of the beauty of Prince Edward Island and of the attractive neatness and care so often displayed by Island farms and other homeowners. On two occasions he was asked if there was a law requiring that lawns be cut!

Mingled with this pride, however, was also considerable concern that acceptable quality standards are not being followed by more and more landowners, that many of the measures which could be taken to improve our landscape are being ignored, that existing laws are not being enforced and that our landscape is being taken for granted.

Numerous presentations made to us at our hearings suggest that Islanders feel the public value of Island landscape is being "cropped" by ribbon development in the countryside, by cottage developments in coastal areas and by residential placements that destroy scenic views for all but the homeowners. Many of these concerns could be addressed by more quality planning and design work. For example, in one presentation it was suggested that the siting of a building so that the view is enjoyed from the side of the vista often would enable the owner to enjoy the scenery without destroying the landscape for everyone else.

The landscape is never static. It changes constantly although these changes may be so slow and so subtle that they are not discernable in the short-term. The erosion of a coastline, for example, may not be noticed by someone living nearby even though they see it every day. The change may be readily visible only to someone who returns to the location after an absence of several years. The fall of a tree may completely alter a view. Less noticeable is the change in the landscape that evolves slowly as trees gain height and density. But natural changes--which can be swift when fires, storms or other upheavals leave their mark on the landscape---are usually slower in the evolution than manmade changes. In the space of a few hours or even minutes, a single individual can destroy the quality of landscape in a particular locale. Conversely, human efforts can often, in a short timespan, improve the quality of landscape. Development of the landscape by built structures alters the landscape, whether for better or for worse, in a significant way for a long period of time.

In all of the three basic elemental environments, there are special landmarks, scenic vistas, exceptional views. These are favourite spots. These are the places we look forward to seeing on a "Sunday drive". These are the areas we make certain our visitors tour. These are the best we have to offer. The special landscapes are areas that deserve special consideration. These are properties where general landscape standards are not enough. Over and above what is generally acceptable, the public wants preservation of these landscapes for public enjoyment now and for future generations.

Some of these areas receive some protection now. Portions of Strathgartney, for example, is a provincial park. Some are protected "natural areas"---although the criteria for a natural area and a scenic view do not coincide. A natural area may have unique biological features but that does not guarantee it is a scenic area. Royalty Oaks, for instance, is a natural area. While its unique characteristics are appreciated by individuals attuned to nature and its greenery is a welcome oasis in the midst of what has become a densely-developed area, it does not offer spectacular scenery. Many of the special landscapes are not, in fact, uncommon natural areas for they are ordinary fields and/or woodlots. Their claim to special status rests often in the combination of otherwise commonplace features: a mixture of land (and usually water) that have suitable topography to provide a panoramic sweep of countryside or seascape for the viewer.

There is a central, predominant concern about these special landscapes focused on development. These landscapes are being eroded, even lost entirely, by the construction of buildings, particularly residential housing.

Traditionally, Islanders have tended to shun coastline housing. Anyone familiar with local weather conditions in the winter months, particularly the conditions that prevail along the Gulf of St. Lawrence or, to a lesser extent, Northumberland Strait, prudently chose permanent housing sites elsewhere. Improvements in housing and transportation, the growth in seasonal residences and a social trend marked by a preference for a "water view" have resulted in an accelerated pattern of residential construction in areas that, in many cases, have been shunned in the past.

This emerging pattern of settlement has at least three prevalent types. In some cases, individuals have constructed a single-family dwelling that "commands" a view. If they have sufficient forethought and resources, they acquire ample property to ensure their dwelling will be the only one to have the benefit of this location. Where this has not occurred, the property may have been subdivided so that a cluster of housing springs up and forms a second category within this settlement pattern, frequently as a more densely populated form of ribbon development. Usually---but not always---these are permanent residents, while the third category is largely comprised of seasonal dwellings located usually on property that has been subdivided for this purpose. Sometimes these areas have assumed the density of a village, largely bereft of the other types of structures and businesses associated with community living. In other instances, they are isolated examples, scattered in a higgledy-piggledy fashion amidst a network of utility poles and laneways that foretell of future communities adjacent to the coastline.

A picture is worth a thousand words. We had the benefit of two pictures provided to us by Mr. David Sisam, a professional architect with a vacation home in Seaview, overlooking the Gulf of St. Lawrence. A resident of Toronto with family roots in the Maritimes, Mr. Sisam expressed, through these pictures as well as his commentary, the concern verbalized by many others who made appearances before the Commission.

To illustrate the deterioration in the quality of the landscape, we have only to compare these two photographs. One picture is a view of seashore property. There is a cloudless sky, a calm sea with the gentle ripple of waves on a sandy beach. Beyond the beach there is a cliff of dark red soil that marks the edge of a grassy field. There is not a single building in sight. The view is by no means unique. Nor does it have spectacular dimensions. The beach does not seem as wide as many Island beaches. The cliff is not particularly high, nor is it one of rocky, jagged sandstone. There are no dunes in view. There are no trees. But it does provide a panoramic sweep of land, sea and sky, more flat and spacious than might normally be characteristic of Island landscape. It offers a view that would be attractive for any homeowner wanting shore frontage and the grassland and relative flatness of the typography suggest it could be suitable property for residential construction.

The second photograph illustrates the result when this construction takes place. A road with a single strip of pavement, flanked by a parade of utility poles leads to a welter of structures and a further profusion of poles. The cottages range in design from travel trailers to two storey dwellings. What appears to be a recycled one-room schoolhouse and bungalows are clustered amidst "baby barns" and other ancillary buildings. While there is a small grove of trees adjacent to one side of the pavement and a smaller patch of greenery near the shoreline, there is not a single tree visible in the cottage subdivision itself. As for the seascape, much of it is obscured from view by the buildings. No doubt many, perhaps all, of these cottages are lovely seasonal dwellings that have been costly for their owners to acquire or construct. But the collective result of their efforts is a visual disaster, best described as a holiday shanty town. (Our tour of the Island, described in Appendix B of Volume II confirms this subdivison is typical of many, although the paved roadway is an uncommon feature.)

In the submission that accompanied these photographs, Mr. Sisam succinctly stated the concerns that underlined many presentations which focused on the deterioration of the quality of Island landscape. He described what he termed the current situation in these terms:

> Much of the seashore property in Prince Edward Island is owned by farmers or by speculators who have purchased the land from the farmers.
>
> Under the current Planning Act Regulations it is relatively easy for these land owners to subdivide their shorefront property into lots (usually about one-third to one-half acre lots). This is done for various scales of subdivision usually without any input from consulting planners or related professionals other than land surveyors.
>
> This process results in subdivisions of lots each purchased by individual buyers who each hire their own builders. *Relatively inexpensive cottage accommodation is provided while unfortunately often creating a landscape that is visually disruptive and lacking in response to orientation or topography.* Substantial tracts of agricultural land are also removed from production.
>
> This subdivision is contrary to the collective concern about the 'quality of landscape' and the importance of seashore vistas as part of the Island experience. The *tourists visiting Prince Edward Island spent 82 million dollars in 1987, more than three times what they spent in 1975. Are these tourists going to want to visit an island whose shorefront (other than the National and Provincial Parks) is a clutter of unplanned ad hoc cottage subdivisions?* The fact that 3500 more cottage lots were created than building permits issued in the last 14 years suggests that subdivision approvals have exceeded the demand for [*sic*] cottages in any case. [Emphasis added]

Mr. Sisam proposed what he termed "other options" in order to overcome these problems and in this section he further identified difficulties inherent in the existing approach.

> Other options for the limited development of seashore property must be developed. These options must recognize both the integrity and beauty of the landscape as well as the need to keep as much agricultural land in production as possible.

> Stricter planning guidelines and the involvement of planning and design professionals in the process is necessary to ensure that the collective concerns about the 'quality of the landscape' and the preservation of agricultural land are integrated into any future development.
>
> A more comprehensive approach is needed. *Development when and where an individual owner decides to subdivide his land will only result in a seashore that reflects confusion rather than harmony.*
>
> Other types of development such as inns or hotels should be studied as a way of providing more people with the opportunity of partaking in the seashore experience without the necessity of creating more subdivisions.
>
> The legacy of implementing such a policy which provides control and guidance for future seashore development will be an Island whose people clearly recognize its remarkable landscape and sense of place. *The legacy of not implementing such a policy will be a lost opportunity and more significantly a marred landscape whose original beauty and integrity can never be recovered.* [Emphasis added.]

We asked numerous members of the public and professionals in land use planning what measures can be taken to preserve the landscape. Many of the recommendations found elsewhere in this report, recommendations dealing with trees, weeds, garbage and so forth, are measures that offer considerable potential to improve the quality of the landscape. But, aside from these, there were others we recommend as means to ensure such goals.

The first of these calls for the province to employ a landscape architect or a planning/design specialist who can provide advice and assistance to those who are applying for building or subdivision permits and who can offer practical suggestions in developing land use plans. This advice came to us by way of the staff at the Niagara Escarpment Commission who pointed to the value of having such expertise on staff. Few developers or members of the public are likely to engage such professional services but many willingly take advantage of the professional advice being offered if provided by a public agency. Essentially, we understand that the cost of providing such a service to the public is well worth the overall results that have been obtained in areas seeking to preserve or enhance landscape quality.

Secondly, we believe an extensive inventory of special landscapes is essential. There are places where the existing landscape must be preserved from all forms of development or where development of any kind must be undertaken only in more carefully prescribed terms. A first step in this exercise is the preparation of an inventory, as has been done in the New England States. This inventory must be extensive, erring on the side of generous and it must have widespread public input. It should encompass both inland vistas and seascapes. Once completed, the comprehensive set of land use plans need to include protective mechanisms for these special landscapes, using such means as limitations, or, where appropriate, prohibitions against any form of built development.

To enable the travelling public to enjoy the Island scenery with greater safety, we are of the opinion that a generous number of scenic look-outs must be designated and constructed by the province. This need is particularly pressing along scenic drives and major highways. It is a program that we would envision unfolding over an extended period of time with each new look-out being constructed as regular road construction occurs near any designated spot. These places need not be elaborate but they would enable motorists to leave the regular traffic stream and park off the highway to enjoy the scenery.

Finally, we are of the view that special measures must be taken to enhance the landscape at the entry points of the province. Trees, shrubbery and flowers, particularly at the Albany interchange, would give visitors to the Island the clear perception of arriving at the Garden of the Gulf.

Accordingly, we recommend

- **THAT the landscape be of paramount consideration in government activities.**
- **THAT the integrity of the landscape be an essential component in land policies.**
- **THAT the province promote greater public appreciation of the role of the working landscape in the provincial economy.**
- **THAT the province retain the services of a landscape architect/planner to facilitate better land use planning and design.**
- **THAT the province prepare an extensive inventory of special landscapes, that encompass both vistas and seascapes, with widespread input from the general public and from community groups and organizations.**
- **THAT a comprehensive set of land use plans include protective mechanisms for these special landscapes, using such means as limitations, or, where appropriate, prohibitions against any form of built development.**
- **THAT the province designate a generous number of scenic look-out points along roadways, particularly those roads that are included in the scenic drives and those which are major highways, and, as road construction occurs near any designated point, construct appropriate places where motorists can park off the highway to view the scenery.**
- **THAT the province undertake special measures to enhance the landscape at the entry points of the province, particularly at the Albany interchange.**

Chapter 18

HISTORIC PRESERVATION

The landscape is not limited to the features that nature has wrought; it is also defined by the changes that the built environment has rendered in supplement to natural components. So often the term "landscape" mentally connotes only rural, pastoral settings or coastal seascapes, frequently devoid of structures. But the landscapes we most admire or those most readily identified with a particular area may be settings where nature has been modified or supplemented by pleasing additions. The well-placed, suitably proportioned lighthouse, for example, may be precisely the right addition to a coastline, transforming the surrounding landscape from one indistinguishable section of seascape to a magnificent scene. Without Fort Edward and Government House, Victoria Park and the Charlottetown Harbour would lose much of their appeal. Why?

Sometimes the answer is easy. One or more structures of long-standing familiarity can render an otherwise common view into one with a unique visionary attraction. What might be a rather ordinary field can be transformed by a church or house that seems so well suited to the setting it is almost impossible to imagine the building without the background - or the background without the building.

Landscapes, then, are not confined to natural components. Nor are they the exclusive preserves of rural areas. More and more city planners and architects are realizing the importance of this fact and its corollary: that urban landscapes require a delicate balance between natural elements - trees, flowers, and other greenery combined with open spaces - and the built elements.

On consideration, many times the aesthetic value that we place on a landscape has to do with the building on it. Means to preserve that landscape therefore must include measures that preserve historic structures, both singularly and in collective groupings.

Those who are advocates of history will, we suspect, willingly applaud such a suggestion. Those who are quite convinced, however, that "progress" must go in tandem with destruction of anything that is not new, will need to be persuaded. To do so, we resort to the tried and true arguments of financial benefits accruing to such measures. We can and will, equally, present philosophical and abstract dimensions for the debate, realizing that the merits of preserving our past for reasons of cultural guardianship, identity and other nonfinancial criteria are very likely to do no more than reinforce the opinions of those already committed to the goals and objectives of historical preservation.

By definition, historic preservation means we deal with a scarce resource. There are, for example, a finite number of nineteenth century structures in the Province now. *A regime that insists on historic preservation has no means to increase that stock and the natural destruction of fire and other misfortunes will diminish that number through time. Without protection, the resource decreases more quickly. Historic preservation cannot increase the numbers, but can insure present levels diminish slowly. Scarcity yields value.*

During the course of our public hearings, the Prince Edward Island Museum & Heritage Foundation appeared before us to urge that this historical dimension be given consideration in our study of land ownership, land use and the landscape. The economic benefits of historical preservation were not lost on the Foundation, whose Executive Director stated:

> Heritage preservation has been in place in Britain as government policy for forty years. Far from being looked on as a detriment, having property so designated is a matter of pride *and* is considered to increase the value of the property. . . .
>
> As time goes on, such historically interesting properties continue to increase in value - because their numbers never increase. By definition they are a scare commodity. They are a commodity we *must* start saving now in Prince Edward Island before it is too late. [Emphasis original.]

Too often rules with respect to preservation are seen as forced expenditure that would otherwise not have occurred. This perception may fail to consider that expenditures are often made for renovations or new construction, expenditures which could have been alternatively directed towards preservation or restoration sympathetic to the structure's past.

A classic example of this came to our attention during our public hearings, quite inadvertently, when we arranged to hold one of our sessions in a church hall belonging to one of the many local churches in the Town of Alberton. As most Islanders familiar with the area know, Alberton is a municipality with an extraordinary number of churches, many of which were built in a design that suggests they had served their congregations and the community itself for many, many years. We found our proceedings scheduled to take place immediately adjacent to a classic example of a small Island church - well maintained with neatly manicured lawns and a quiet nearby cemetery. It was a beautiful little spot! During a pause between sessions, we wandered around the exterior and interior of the church itself, searching for clues as to its age. The design suggested the building had been in existence for a century, more or less. But what had once been, very likely, a shingled exterior was now sheathed in siding. The interior was carpeted and paneled. There was nothing "wrong". Indeed, repairs and renovations over the years, no doubt had been costly. But historic preservation could have meant that these dollars were targeted towards a more sympathetic approach to the original types of materials and the details of the design found in the building as it once was.

No doubt there are many situations where complete "restoration" is not feasible, either from a practical or an economic standpoint. But there are also many examples where historic structures are being altered merely to reflect the latest "fashion" in building trends. Replacing two or more large rectangular windows with a single "picture window" in a nineteenth-century residence is a recurring example of this type of behaviour and one which has been seen with great frequency in this Province. Since its formation, the Prince Edward Island Museum and Heritage Foundation has attempted from time to time to awaken a greater heritage consciousness that would result in further preservation efforts, but, all too often, such messages seem to have fallen on deaf ears.

Historic preservation was endorsed on a global basis more than two decades ago when the general conference of the United Nations Educational, Scientific and Cultural Organizations (UNESCO), in 1968, unanimously adopted a "Recommendation Concerning the Preservation of Cultural Property Endangered by Public or Private Works". Four years later, it adopted a "Recommendation Concerning the Protection, at National Level, of the Cultural Heritage" and, in 1976, it again adopted, unanimously, a "Recommendation Concerning the Safeguarding and Contemporary Role of Historic Areas". A consolidation of these recommendations and related treaties formed part of the "Conventions and Recommendations of UNESCO Concerning the Protection of the Cultural Heritage" in 1983. While Canada voted for all of these recommendations, its response has been considered far from swift or satisfactory.

That certainly appears to be the conclusion drawn by Marc Denhez in an article entitled "CIP Contributes to the Buildings Revival Coalition", found in *Plan Canada* (vol. 27, no. 4, June, 1987) at pp. 113-117. While the focus of the Denhez article is on federal government policies in relation to investment properties (which he identifies as "rental residential or commercial") rather than institutional or owner-occupied residential properties, some of the observations made in his report to the Canadian Institute of Planners are undoubtedly applicable, albeit to a different degree, to properties that are not in the category of "investment properties".

Before we direct attention to these observations, the introduction from Mr. Denhez's article serves not only to provide general information on the Canadian potential relative to historic preservation but also to explain the work of the Buildings Revival Coalition. At p. 113, he stated:

> Canada's stock of pre-1941 buildings has been tentatively evaluated at $115 billion. Some $55 billion worth is composed of investment properties (rental residential and commercial), whereas the other $60 billion is not (i.e. is owner-occupied or institutional). The prospective requirements for "rehab" work (i.e. rehabilitation within the existing envelope) among the pre-1941 investment properties alone has been tentatively evaluated at $35 billion. However, despite the size of the prospects and the implications for the GNP, there has never been an articulated national policy on how to capitalize upon this inventory.
>
> In late 1985, several national organizations discussed the matter in private meetings. The result was an ad hoc coalition, seeking a federal policy which would address the question of the rehab of Canada's older building stock. Initially, the coalition members were: the Heritage Canada Foundation, the Canadian Institute of Planners, the Institute of Urban Studies and the Ontario Home Builders Association of Canada and the Canadian Federation of Labour. In 1987, the National Renovations Committee of the Canadian Home Builders Association joined. In the meantime, the Federation of Canadian Municipalities had also been pursuing a parallel course.
>
> The Coalition's focus was the "rehab industry." The value of that industry has been estimated in the vicinity of $18 billion per year. That gives the industry a significant position in the GNP.

> Moreover, the industry is growing. Indeed, it is generally acknowledged that the economic climate in Canada has never been so conducive to rehab. Nonetheless, it appears that if the industry were as healthy as its American counterpart (on a per capita basis), it would be worth $33 billion per year (Can.). This, along with the intrinsic size of the stakes involved, prompted the coalition to call for an analysis of public policy on the question.
>
> Canada does not currently have a policy favouring efforts to capitalize on this building stock. In fact, public policy has tended in the opposite direction. The rehab industry, like the real estate sector generally, is one of the few areas of capital investment which was not encouraged by the government of Canada. Compared to manufacturing, for example, rehab was denied Investment Tax Credits, was allowed a lower rate of tax-deductible depreciation, and paid a higher tax on every dollar of profit. These three factors would, on occasion, turn what would otherwise be profits into losses and vice versa.
>
> The coalition retained the services of Young Parkyn McNab (a firm of chartered accountants affiliated with Coopers & Lybrand) to quantify the discrepancy in real-life situations. The firm did case studies in southern Alberta (Alberta was an ideal location, because its almost non-existent corporate taxation meant that the case studies could profile the undiluted impact of federal fiscal policy), selecting a sampling of real-life rehab projects for which exact figures were available for both the level of investment and the level of return. The figures were produced in two columns: one was for the actual figures, and the second column described the figures which would have been produced with an identical investment and an identical before-tax profit in manufacturing. The discrepancy was not only sizeable, it was very significant. In short, the government of Canada has intervened substantially in the marketplace in order to redirect the flow of investment capital and to encourage certain investments at the expense of others. . . . The Coalition believed that the rehab industry did not deserve such treatment. That belief was based not only upon principles of "fairness and equity," but also upon the economic realities of the industry.

Just what were the economic realities that were identified? According to Denhez, "*the first such economic reality was job creation*". [Emphasis added.]

> *The coalition had, at its disposal, a variety of reports demonstrating that rehab had better jobcreating features than most other sectors of the economy. In February 1986, however, the Canada Mortgage & Housing Corporation produced even more updated statistics, and dollar for dollar, rehab was shown to create 117 percent more direct jobs than new construction. Total direct and indirect job creation was at a rate of 59.5 per million dollar expenditure, which was substantially higher than manufacturing and most other sectors of the GNP.* To give a flavour of the dimensions involved, one may consider the following: if indeed the gap (pro rata) between the U.S. and Canadian rehab industries is in the order of $15 billion, then closing one third of that gap ($5 billion) would create 300,000 jobs. [Emphasis added.]

In *The Canadian Renovation Market*, published in 1986, CMHC maintained that "*Renovation is twice as labour intensive as new construction and yields 27.8 direct jobs per million dollar expenditure on renovation, compared to new construction which is material intensive and produces just 12.8 direct jobs per million dollars expenditure.*" [Emphasis added.]

The second economic factor identified by Denhez was tourism. At page 113, he had this to say:

> Tourism is reputed to have passed agriculture as the world's largest dollar-generating industry. *The capacity of rehabbed areas to attract tourists has been documented throughout North America* to the point that the Manitoba Department of Finance concluded that "the possibility of rehabilitated districts or single faithfully restored buildings acting as tourist attractions has been recognized and intensively cultivated as a means of expanding commercial revenue activity." [Emphasis added.]

A third economic factor was a potential, positive impact for municipal finances, stemming from two directions: a possible savings in relation to infrastructure and utilities and/or increased revenues generated from enhanced property values or other economic stimuli. In this regard, Denhez wrote:

> From a municipal standpoint, an even more important feature is the impact of the rehab industry on municipal finance. Over the past few years, there have been increasing concerns expressed by municipal treasurers about the increase in costs of municipal infrastructure and utilities. In many cases, *demands on infrastructure and utilities required for redevelopment would erode a significant part of the contribution which redevelopment made to the municipal tax base. Rehab, on the other hand, tended to have less impact on infrastructure, and hence a larger percentage of the assessment increase would be net to the municipality.*
>
> The U.S. government has documented the effects of rehab in several case studies (Seattle, Galveston, Alexandria Va., and Savannah). *Property values increased* nine percent to 43 percent per year over the four years following rehab. *Average municipal assessment rose* from $25,852 per building before rehab to $309,214 per building after rehab. *Retail sales rose* 24 percent to 125 percent per year over the same four year period. [Emphasis added.]

Finally, Denhez felt there was an economic component, albeit one more difficult to quantify, derived from its spin-off effects. In this regard, at p. 114, he stated:

> One of the most intriguing features of the rehab industry is its potential to attract investment. As mentioned, the potential gap to be made up (between the Canadian and U.S. industries on a pro rata basis) has been tentatively evaluated at $15 billion annually. Of equal importance is the prospect that *this investment could defy regional disparities.* Although some concern had been expressed over the prospect that this investment would gravitate to the older parts of the country, the U.S. track record does not bear that out. The eastern seaboard and the Old South did not monopolize the rehab industry. Cities like Kansas City, Minneapolis, St. Louis and Louisville were among the top ten cities to benefit from federal policies favouring rehab. Case studies further indicated that when the U.S. government favoured investment in "certified historic" properties, the impact in an state like Oregon (which few Canadians would have expected to be certifiably historic) was dramatic.
>
> There is no reason to expect a different result in this country. Every region of Canada has areas which, by its own [Emphasis original.] standards, are considered "old," "colourful," and an appropriate target for rehab. The city of Yellowknife, for example, is preoccupied with the fate of its Old Town, which is predominantly

> composed of 1940's buildings. There is no reason to believe that Yellowknife, and innumerable municipalities like it from coast to coast, could not capitalize on these areas if given the right economic climate. This is in distinct contrast to government encouragement of other areas of the economy (e.g. high tech, manufacturing etc.) which have had a tendency to gravitate toward a handful of centres. Furthermore, *since most rehab expenditures focus on local jobs and local materials, the spin-off effects tend to be felt locally.* [Emphasis added.]

As we indicated earlier, the arguments put forward by Marc Denhez centered on the national scene with particular emphasis on federal government taxation policies in relation to investment properties.

Moreover, the thrust of both his thesis and the direction of the Buildings Revival Coalition, along with such studies as that undertaken by CMHC, is "renovation" or "rehabilitation" which, does not always coincide with "historic preservation", as many would define this term. Indeed, this approach may be the exact antithesis of historic preservation. The church in Alberton, which we earlier described, had been renovated and/or rehabilitated, but it had not been preserved from the heritage standpoint. Purists who promote historic preservation urge "restoration", so that buildings are brought back to their original status using methods and materials totally compatible with the era in which they were built. While this is a commendable objective for a few isolated structures, it is neither practical nor desirable for many older buildings. Nor is it necessary to be this extreme in most instances to preserve the essential characteristics of our landscape. Government House, for example, can be painted rather than "white-washed", but the addition of a solarium at the front door would be unacceptable.

However, we are of the view that the general characteristics of a practical policy aimed at historic preservation would have the economic benefits characterized by rehabilitation. It would be more labour intensive than new construction - and, in fact, we would suggest that very likely in most instances it would be even more labour intensive and less oriented towards the use of materials than rehabilitation or renovation. The tourist component is readily identifiable. The impact on municipal finance and the economic spin-offs would, we feel, be positive components as well.

Historic preservation, particularly where it leans towards "restoration", can provide an additional economic benefit that has been identified from some of the projects undertaken in this regard. Where restoration has involved traditional skills, projects have enabled local trades workers to develop once-common but now all-but-forgotten techniques which, in turn, are subsequently utilized either in other local projects that are not necessarily centered on historic preservation or on projects elsewhere that call for such skills. At the very least, restoration provides a means of enhancing craftsman skills that spell informal on-the-job training opportunities for local tradesmen.

Our suspicions that a positive approach towards historic preservation can have beneficial economic effects are further augmented by one additional dimension brought forward by Denhez, at pp. 114-115, when he stated:

> The American track record was of particular interest. In 1976, the U.S. had introduced fast write-offs for the rehab of certified historic properties. In 1981, the Reagan administration had reviewed this approach and made changes. Many observers expected the Reagan administration to treat the subject as a "frill", particularly when the review was entrusted to the then Secretary of the Interior, James Watt. *Instead of cutting back on measures for rehab, however, the Reagan administration drastically increased them.* As of 1981, tax credits became available not only for the rehab of the Americans' half million certified historic properties, but also (at a lower level) for the rehab of any non-residential building over 30 years old. *The rationale,* according to Watt, *was not merely to beautify the country. It was intended as "a tool to help revitalize communities and strengthen the nation's economy...The new incentives will help maximize private capital, create new jobs and bring about economic revitalization."* Not surprisingly, the legislation was called the *Economy Recovery Tax Act.*
>
> In 1985-86, the U.S. witnessed a further review of this strategy in the context of the Tax Reform debate. *A host of municipal officials testified in Washington that these measures were too essential to the American economy (and to municipalities) to be compromised.* Although the measures were scaled down slightly, one may note that the inducements for rehab are almost the only tax incentives to survive Tax Reform and to be maintained in the new tax legislation adopted in October 1986. [Emphasis added.]

Aside from the economic component, if Prince Edward Island is to be marketed as the birthplace of Confederation, greater attention must be paid to historic preservation, sympathetic renovations and compatible designs. While this is particularly so in the Charlottetown area, it is equally so in parts of the Province like Cavendish and the Acadian area. Where the tourist attraction of the locales are heavily dependent on a traditional flavour in the landscape, not some "futuristic" concept, historical preservation policies are a must.

Much of what is traditional in the built segment of our Island landscape has vanished. The remainder is rapidly disappearing. The rural schoolhouse has become a rarity. Railway stations by the dozens have vanished, often through radical transformations into new uses in altered locales. The country store of yesteryear is an endangered species among commercial establishments. Gone are almost all the traditional manufacturing sites of an earlier era: sawmills, feed mills, creameries, butter factories, berry canneries - the list is endless. Few old mills remain and their aesthetic qualities are being ignored. Traditional shoreline buildings - the lobster factories of yesteryear with the once-familiar cookhouse and the summer shanties - have been lost. Lighthouses are few and far between. Rural post offices - many already of modern design - are now threatened with change (or, should we say, "extinction"?). The homesteads and farm buildings of past eras are rapidly dwindling in numbers amidst three-bedroom bungalows, split-levels, ranchers and plastic-coated potato warehouses. Even such historic landmarks as our nineteenth century churches are disappearing under veneers of convenience and conformity.

While those who acclaim the importance of promoting historical roots do urge the preservation of heritage buildings, few have tied this into the study of landscapes. One notable exception is Virgil Martin, who prepared a unique presentation through rephotography in *Changing Landscapes of Southern Ontario,* published in 1988. The author expressed his point largely through the use of pairs of outdoor photographs. One (or sometimes more) pictures of a landscape scene, captured on film in the past, was paired with a photograph of the same location as it existed when Martin prepared his manuscript. As he explained in his introduction, at page 11, "Rephotography reduces ten years, or a hundred years, to a flash between two frozen moments, creating a sensation of time travel..". Although Martin examined a variety of landscapes in rural and urban areas, the historical connection is made in his introduction to what he called "Special Places". At page 189, he wrote:

> The photographs in Chapter One portrayed some of the physiographic aspects of Southern Ontario's landscapes, while subsequent chapters dealt with some major ways in which human hands have modified the landscape. There remains, however, a collection of odds and ends gardens, beaches, waterfalls, parks, monuments, and a variety of public buildings. This diversity might seem too great even for a catch-all chapter, but there is a shared element. *These landscapes are not incidental byproducts of whatever human endeavours, but rather, they have been deliberately preserved, manipulated, or created for their own sake. They are not ordinary landscapes, though in some instances their familiarity or fame may belie their uniqueness.*
>
> ....
>
> From the sculptured leisure of the city park, we cross the street to consider the more formal landscape of religion. A church is in many respects the opposite of a factory. Spiritual rather than material concerns shape a church; a religious edifice is steeped in symbolism, tradition, and history rather than modern technology. Traditionally, wood and stone or brick are used to express abiding faith. On a symbolic level, churches can be compared with city parks, which are representative of Nature, and with monuments, which immortalize our heroes.
>
> Other types of public buildings---rural schools, railway stations, and libraries---are also illustrated in this chapter. To a degree they are like churches in that their architecture is intended to inspire awe and humility. Their designs clearly show more utilitarian influences, but they too reflect a striving toward symbolic importance and monolithic permanence. Nowhere is this more evident, or more appropriate, than on Parliament Hill, where our sense of history and national identity is enshrined in distinctly unAmerican fashion.
>
> *Public buildings and public parks, though by no means immune from the wrecking ball and bulldozer, on the whole show greater stability and permanence than most other cultural features of the landscape. Given our climate of continual change, it seems likely that their place in the landscape will grow still more prominent. And as their perceived value increases, perhaps their future grows more secure.*
>
> *Wide recognition and respect for landmarks and special places should have a stabilizing effect on both society and its landscapes.* ...many of the photos in this chapter are of places where Ontario's adolescent landscapes are beginning to take on a degree of maturity. Although in this respect they cannot rival the common landscapes of the Old World, most of these places have mellowed considerably and many appear to have achieved some ecological stability. [Emphasis added.]

Historic preservation is, in our opinion, an integral part of maintaining and enhancing our landscape. As such, we feel it must be a recognized and integral component of land use planning policies.

In 1988, the Cultural Affairs Division of the Department of Community and Cultural Affairs finalized the "Report of the Ministerial Committee on Heritage and Museums Policy". The report addressed the subject of "landscape and natural history", acknowledging, at p. 8, that "[t]he landscape of Prince Edward Island constitutes a major part of the natural environment that needs to be preserved".

> If the Island is to retain its distinctive heritage, one of the most important dimensions of that heritage is the landscape and natural environment. Experience teaches us that the continued existence of such characteristic elements as scenic roads, hedgerows, dunes, beaches, and farmland (to name the most obvious) is threatened unless deliberate actions are taken to prevent their disappearance, whether by natural events such as erosion, or by construction of new roads, or by sale or redevelopment.
>
> To date, the prime responsibility for defending the Island's landscape has been taken by the Provincial Government in a series of legislative acts (for example, the *Environmental Protection Act*, the *Planning Act*, the *Recreation and Development Act*, the *Signage Act*), and by the Island Nature Trust, particularly through its leadership in the development of a Conservation Strategy. The existence of a Provincial Conservation Office and of a number of provincial commissions concerned with the use and development of land, and the establishment of a Provincial Conservation Strategy Advisory Council, all make clear the Government's concerns to protect the landscape against further devastation.

While the province has recognized, to some degree, the importance of landscape preservation, this has been done primarily (if not exclusively) in the context of the preservation of natural areas. Perhaps this emphasis reflects an appreciation of the need to preserve natural areas for environmental reasons and/or a failure to focus on the heritage preservation aspects involved in these policies. For whatever reason, it would seem that what has not been fully appreciated is that the landscape is an intricate mix of both natural areas and built components. Historical preservation, in the landscape context, involves both natural features of the land and the external appearances of the built environment.

Heritage preservation with respect to the built environment was considered in a separate section of the Report of the Ministerial Committee. At pp. 11-13, the report noted:

> There is no uniform legislation within the Province to protect the built environment, and the situation varies from adequate to non-existent. In Charlottetown, for example, the existence of an active Charlottetown Heritage Review Board appointed by the Mayor insures that the City Council is given judicious advice in the matter of the issuance of building permits and the designation of heritage structures. While the Council can in fact override the advice it receives, that advice constitutes a strong moral force and cannot be ignored lightly. By contrast, Summerside and other municipalities, while they have the power to enact legislation aimed at protecting the built environment, have not so acted.
>
> In all areas administered by a community council, building permits are issued by the Minister of Cultural and Community Affairs, similarly in non-organized, nonincorporated areas. But the Minister has no power to be swayed in his decision by considerations of heritage or aesthetics. A permit must be issued if the proposed building meets the requirements of the various codes.

> While the Museum has among its legislated powers the right to "acquire, hold, preserve, maintain, reconstruct, restore, and manage property of historical, architectural, and cultural interest," it can exercise these rights *only* if properties are offered on a voluntary basis to the Museum.
>
> Because the built environment is differently protected in different parts of the Province regardless of its heritage value, and because neither the Provincial Government nor the Museum has regulatory powers that can be exercised in defense of heritage structures otherwise unprotected, there is an obvious need to establish a unified provincial policy towards the protection of the built environment and whatever mechanisms are needed to put that policy into effect, such as Provincial Heritage Review Board.
>
> It is not enough to protect our architectural heritage by means of regulations. There must also be provision for advice and help in architectural conservation. The beginnings of such a program do indeed exist at the Museum, and it involves not only the delivery of professional assistance but also the awakening of public interest. But the need for an enlarged program is obvious, and the Museum should be asked to design a plan for offering services in this area on a scale that meets the Island's requirements. Meanwhile, every effort should be made to update, revise and review an earlier survey of the built environment.

The Ministerial Committee on Heritage and Museums Policy then recommended "that a unified provincial policy for the protection of the built environment be established" and "that the P.E.I. Museum and Heritage Foundation upgrade its architectural conservation services".

The presentation made to us by the Prince Edward Island Museum and Heritage Foundation made it clear that the recommendations of the Ministerial Committee on Heritage and Museums Policy had not been adopted. The Foundation also elaborated on the solutions it felt were necessary.

> *Although the preservation of heritage buildings is usually associated with the urban environment rather than the rural landscape, the reverse should be true in Prince Edward Island. Here our development, until this century, has been one of rural growth, resulting in a heavy preponderance of our heritage building stock being located in small villages, in groups of four or five buildings or standing alone in the countryside.*
>
> ....
>
> At the Prince Edward Island Museum and Heritage Foundation we believe that land use planning for Prince Edward Island should include the following four components:
>
> (1) Identification of heritage buildings
>
> (2) Identification of heritage groupings
>
> (3) Identification of areas which contain an unusually high proportion of heritage building stock in a relatively unspoilt environment
>
> (4) Protective legislation for the resource identified above.

Fortunately, the first of these components has already been completed by the Canadian Inventory of Historic Buildings and the second was partially addressed in the same survey. However, much work must be done if the remainder of these tasks are to be completed. As far as I can tell no attempt has been made to compile a list of the third category. And...there is at present no legislation to protect or even mark buildings of provincial historic importance.

We are fortunate that in Charlottetown there exists a Heritage Review Board, appointed by the mayor to give the city council advice in the matter of preservation of heritage structures. No such mechanism exists for our rural areas or in other municipalities on the Island.

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While the Museum has among its legislated powers the right to "acquire, hold, preserve, maintain, reconstruct, restore, and manage property of historical, architectural, and cultural interest," it can exercise these rights only if properties are offered on a voluntary basis to the Museum.

Because the built environment is differently protected in different parts of the Province regardless of its heritage value, and because neither the Provincial Government nor the Museum has at present regulatory powers that can be exercised in defense of heritage structures otherwise unprotected, there is an obvious need to establish a unified provincial policy towards the protection of the built environment and whatever mechanisms are needed to put that policy into effect, such as a Provincial Heritage Review Board.

Although it is needed, it is not enough to protect our architectural heritage by means of regulations alone. There must be provision for advice and help in architectural conservation. The beginnings of such a program do indeed exist at the Museum, and it involves not only the delivery of professional assistance but also the awakening of public interest.

Obviously something has to be done before the blight of ribbon development and the abandonment of rural property spells the doom of our visual rural heritage and the buildings that make it so important are lost to us and future generations. . . .

Legislation ensuring this type of preservation needs to be province-wide. Different parts of Prince Edward Island exemplify different ways of life and sometimes different cultures. For example, the heritage of a farming community can be different from the heritage of a fishing community. The Acadians, the Irish, the Scots, the English, and the Loyalists - to name some of the major immigrant groups - each brought their own unique culture to Prince Edward Island.

It would be truly sad to allow the fortunes of our heritage to be determined by the fortunes of individual communities. One problem would be the lack of consistency - what types of buildings should be designated? Another difficulty is the problem of forcing a small community to make the difficult choice between economic development and preservation of heritage buildings. . . .

> A provincial Heritage Board and strong protective legislation with the good of Island heritage in mind would help to overcome those problems especially if designation of buildings included an incentive to comply with the legislation . . .
>
> I had started to describe the different types of designations. First I referred to the single building designation. That is probably the easiest to understand. There are definitely some unique structures on Prince Edward Island that I believe should be protected and whose exterior should not be altered.
>
> The second type of designation needed is that of a particularly unique or representative group of buildings. There are some small communities on Prince Edward Island that are representative of a certain architectural period - e.g. a church, or rectory, an inn and a farmhouse in close proximity - such as the group around St. Augustine's Church at Rustico. These buildings are of individual value in themselves but are even more valuable as a group. All similar groups should be protected so that they retain their nature as a cohesive entity. Imagine the damage a silo or industrial building would do the skyline of St. Augustine's!
>
> The third type of designation needed is one that identifies buildings within a certain geographical context. For example, the grouping of buildings I just described may be located very close to the shore and the heritage value could be destroyed if a modern condominium were built between it and the shoreline. In such a case the essential land around that group of buildings would also need to be identified as a heritage site. This is the only way truly to reserve the value of those buildings. It is area preservation, not just building preservation.
>
> This area preservation or zoning may also become important in a small community that has a uniqueness *as* a small community with buildings of a certain type or era, such as the village of Victoria. In such a case, an order should be made allowing only controlled development within that community development that is consistent with the older style. In addition, a buffer zone should be created around the community from which modern development should be excluded so as to preserve the environment in which the community sits.
>
> This is not a unique proposal. Regular zoning laws are similar. They control the type of development in an area. What I am asking you to do is consider the heritage needs of Prince Edward Island as part of its land use planning needs.
>
> *If we destroy our heritage, or by lack of action allow it to be destroyed, Prince Edward Island will lose not only part of its history but it will also lose much of what attracts people here now.* There is still something special on Prince Edward Island, something that hasn't yet been destroyed by development.
>
> *[W]e must take control of development now to ensure the preservation of our heritage.* For ourselves and for the future. [Emphasis added.]

While we concur with the essentials put forward by this presentation, we would like to see a more universal basis of application than the Foundation may envision in their identification of heritage buildings based on the Canadian Inventory of Historic Buildings.

In 1964, to mark the centennial of the Confederation Conference held in Charlottetown, each farm property that had been in the same family for the past 100 years was eligible for signage that conveyed this recognition. Many farm properties displayed this signage, with obvious pride, for years and some still carry it. With this program in mind as an imperfect analogy, we feel that the Prince Edward Island Museum and Heritage Foundation should undertake a recognition program for older existing structures in the Province, even though the buildings might not qualify as a "heritage building". Participation in the program would be voluntary and the cost of the signage could be at cost to the owner of the building. Categories might be devised so that in years to come a signed structure could "advance". Categories might distinguish between older buildings that have been well preserved in terms of conformity with original structure and materials and those which have sacrificed some of their heritage features to unsympathetic rehabilitation or renovation. For example, a dwelling that dates from the 19th century but is now sheathed in vinyl siding would be in a different category than one which has not been so altered. While we are prepared to leave the details of such a program for others to formulate, we are of the view that such a program would provide a broad basis of public support and prestige for heritage preservation and, at the same time, it would promote a widescale sense of pride in older buildings.

Coupled with this program, we would urge that there be a program for the preservation of heritage buildings, both individually and collectively, and that this be undertaken in all areas of the Province.

To some degree, we support the Foundation in its quest for protective measures that would assist in the preservation of heritage buildings and any buildings within a heritage grouping or a heritage area, including provisions to restrain new construction of unsympathetic size or design within or adjacent to a heritage grouping or a heritage area. The question, as ever, is where to strike a suitable balance between the rights and interests of the individual property owner and those of the society and its future generations. Where a priceless portion of our past is about to be destroyed or significantly altered, there is a duty to the public to ensure that such action is not being undertaken impulsively or through ignorance. At the other end of the spectrum, the private owner of a residential property should not be compelled to make more costly and, at least from the owner's perspective, less desirable choices through a regulatory process simply because his property includes a structure of some longevity.

Some of these concerns will be met through an identification project that promotes pride in the unique or distinctive qualities in the asset that the property owner has on his land. However, protective measures must go beyond this if heritage preservation is to be effective. Just how far beyond may vary. For instance, we can see merit in having a standard that is different for buildings which are publicly owned or which are subject to some form of group ownership, such as a church, as contrasted with historic buildings that are private dwellings. Standards could well vary in different locales. We are not prepared to make recommendations on what these standards should be, except insofar as the most minimal of provisions are concerned.

Accordingly, we recommend

- **THAT historic preservation of our built environment be an essential component of land use planning policies.**
- **THAT the P.E.I. Museum and Heritage Foundation embark on a province-wide recognition program for all older structures in the Province to promote awareness and pride in buildings that have been part of the Island landscape for the last 50 years or more.**
- **THAT the P.E.I. Museum and Heritage Foundation proceed with despatch on completing an identification of heritage groupings and areas which contain an unusually high proportion of heritage building stock in an relatively unspoilt environment and that the Province provide adequate resources to the Foundation to ensure this identification is completed as soon as possible.**
- **THAT heritage buildings, heritage groupings and heritage areas identified in these survey projects be marked and, if necessary, legislative provisions be enacted to provide for this marking project.**
- **THAT there be a heritage review process linked to the issuance of building permits such that proposed renovations or additions to identified heritage buildings or new construction within identified heritage groupings or areas would be subject to review and that there be some discretion to refuse the issuance of building permits where proposed changes or new construction conflict with the goals of heritage preservation.**
- **THAT the P.E.I. Museum and Heritage Foundation be provided with sufficient resources to upgrade its architectural conservation services.**

One aspect of historic preservation that received little attention in our public hearings was the subject of archaeological remains.

The matter was considered in the "Report of the Ministerial Committee on Heritage and Museum Policy", at pp. 10-11, in these terms:

> The recently passed *Archaeological Sites Protection Act* is testimony of the Government's intention both to protect archaeological sites and to control excavations. It is a good first step, and it is to be hoped that the proposed Advisory Board will provide the Minister of Community and Cultural Affairs with disinterested advice that will lead to an improvement in the degree of protection afforded archaeological sites. It is however not enough to protect sites. There must also be a systematic plan both to record the Island's archaeological remains and to explore those considered of special significance.
>
> Responsibility for excavations and archaeological surveys is loosely exercised. Parks Canada works within the federally administered parks but is not constrained to seek provincial approval for its plans. The National Museum of Man also has conducted important excavations under the supervision of its professional staff. No provincially-based agency or institution is actively engaged in the study of the Province's archaeological remains.

> In the short term there would appear to be a need to develop a protocol between the Federal and Provincial Governments with respect to archaeological exploration conducted by agents of the former. Information gathered in this way should be made immediately and freely available for local study, and the eventual disposition of the records and artifacts should be governed by the *Museum Act*, that is, they should be placed in the Museum (or in any other public institution named by the Minister). In the long run, however, the responsibility for systematic and ongoing exploration of the Island's archaeological remains a provincial matter, and the work of outside agents should be made to serve a provincial strategy.
>
> The area of underwater archaeology should not be forgotten in any plans developed by the Advisory Board. Happily, the new *Archaeological Sites Protection Act* includes material found within the Island's territorial waters. Less happy is the question of ownership of material drawn from wrecks, a matter controlled by century-old Federal legislation involving the authority of the Receiver of Wrecks, represented on the Island by the Head of the Coast Guard. Here is another area in which it would seem reasonable to invite a review of the legislation to make sure that the Island's interests are adequately protected.

The Ministerial Committee on Heritage and Museum Policy recommended: "that the province develop a protocol with the federal government with respect to archaeological exploration conducted in the province by agents of the federal government"; "that a provincial strategy be designed for the systematic and ongoing exploration of the Island's archaeological resources; and "that a review be carried out of legislation governing the recovery of materials found within the Island's territorial waters."

While we endorse these recommendations, we are of the view that our archaeological resources are not being adequately preserved nor are their potential being recognized as a natural resource that can be utilized in a number of ways.

Considerable expert evidence presented to the Land Use Commission hearings on the proposed Greenwich development, for example, cited both the importance of the "Jones Site" from an archaeological perspective and the impending rapid loss of artifacts from natural forces.

The 1984 Report to the Minister of Community and Cultural Affairs on "Archaeology in Prince Edward Island" cataglogued the advances that had been made in investigations and the work that needed to be done to further research.

More concerted attention to archaeological sites could enrich our knowledge of the Island's past, particularly in relation to the native peoples and the early French settlers. In addition, greater emphasis on site investigations could have exciting possibilities with valuable spin-off benefits, particularly in the tourism sector. There are, for example, 50,000 passengers bringing in excess of 21,000 vehicles onto the Souris-Magadalen Islands ferry; much of this traffic comes from French-Canadian tourists going from the Province of Quebec to the Magadalen Islands. Yet there is nothing in St. Peters, the site of one of the earliest French settlements in the province, to provide these visitors with an incentive to stop in the community. An archaeological display demonstrating investigation procedures and/or remains recovered from the area could provide a far more unique attraction, targetted at a defined market, than a duplication of some formula that has had a measure of success elsewhere in the province. Nor have we been made aware of any recent endeavours to attract visitors to the province at the investigative stage, by way of a high-profile site recovery project and/or by way of an adventure holiday package for those who pursue archaeological interests at the hobbyist level. In our view, these are ideas worthy of some consideration in any historical preservation framework.

Accordingly, we recommend

- **THAT historic preservation of archaeological remains be an essential component of land use planning policies.**
- **THAT the province proceed with the recommendations made to the Ministerial Committee on Heritage and Museum Policy in relation to archaeological remains.**
- **THAT a provincial strategy on the exploration of the Island's archaeological resources include components that coordinate educational and tourism opportunities and local development possibilities.**

Chapter 19

RAILS TO TRAILS

The initial creation of a railway in Prince Edward Island was born in controversy. More than a century later, the abandonment of that railway signals another controversy. We have not delved into the question of whether the railway should be abandoned as a means of transportation, a subject canvassed in other forums. But a number of those who made appearances before the Royal Commission asked us to consider the use to which railway land would be put in the event that the rail line was removed.

Representative of the conflicting viewpoints on this issue were the presentations made to us by Mr. Donald Deacon, who urged that the railway be converted into a linear recreational system, and Mr. C. S. Scranton, who spoke on behalf of the Committee for the Return of Abandoned Railroad Lands to Agriculture. Both gentlemen eloquently pointed to the advantages that could be derived from their respective positions and/or the problems potentially presented by the opposite stance.

Mr. Deacon expressed the view that a trail system from one end of the Province to the other would provide numerous opportunities for outdoor recreation in a variety of activities, such as hiking, cycling, skiing and horseback riding. It would be of benefit to both local residents and tourists. Indeed, properly assembled and promoted, the trail could become an "international" tourist attraction which, if suitably meshed with rural attractions and accommodations, could become a key cornerstone in the tourist industry and rural development. He indicated the project could be designed to enable physically handicapped people to enjoy nature. It could provide a year-round tourist attraction, enabling the industry to expand beyond the summer months and even the shoulder seasons. The proposal he made in his appearance before the Royal Commission received the support of a number of other groups, including the P.E.I. Snowmobilers Association who indicated a willingness to provide volunteer time and effort in the development of such a project.

On the other hand, the Committee for the Return of Abandoned Railroad Lands to Agriculture pointed out, quite rightly, that the existing property has not been cared for by the railway. The railway was routed in such a fashion that it frequently bisected farms causing great inconvenience to the adjacent landowner. The most obvious consequence has been the need to fence along both sides of the railway property and to install gates to access some private crossing points. With fencing becoming more expensive, it would be a considerable cost-saving to farmers to be able to span the rail line, thus eliminating the need for gates and reducing fencing requirements to minimal lengths.

Other points in this debate were also mentioned by Mr. Scranton in his able presentation. Improving access to isolated areas for users, many of whom would be urban dwellers without necessarily having an appreciation for farm needs, could well exacerbate agricultural problems. Trespass to farm properties, careless opening of gates, and behaviour that could annoy livestock were possibilities of concern. The risk of fire would be increased - a concern heightened by the high proportion of dead or dying trees in forested areas. Litter was another problem forecast if the railway property became available for recreation. The expense of preparing the property for such a use and the operational costs thereafter were other factors brought to our attention. Safety, policing and liability were also concerns that were cited.

Since these presentations were made to us, a local Rails to Trails group has been formed and media reports suggest it has been actively promoting the ideas brought to our attention by Mr. Deacon and others. Equally active in the ensuing months, Mr. Scranton and various agricultural interests have opposed this development concept.

We have looked at this issue in the context of other jurisdictions before deciding on the stand we should take. Our findings indicate there is an extensive amount of land used for linear recreation, particularly walking and biking, in Europe partially, but not wholly, due to traditional footpaths and country roads. In the United States, there is a growing trend towards conversion of abandoned rail properties to trails of various kinds. Canada has been slow to respond to this trend, although there are signs that other Canadian jurisdictions are now being more active in this domain.

Let us walk through some of these paths to consider the magnitude of this trend.

Even before rail line abandonment began a trend in linear outdoor recreational projects, the United Kingdom had a massive start on the provision of trails for the public's use. This heritage is outlined in *No Through Road: The AA Book of Country Walks - Walking in Britain.* At. p. 4, it is noted that:

> ...Parliament in 1949 enacted that every county council in England and Wales must prepare and maintain a definitive map showing all public footpaths, bridleways and roads used as public footpaths. Most of the counties have completed their definitive maps, and review and revise them every five years. The walker therefore now has an official record, covering most of England and Wales, of where he has the right to go.

As a result of these efforts, *Through Road* was able to report that "no country in the world has such a wealth of public footpaths as Britain".

> Lying open to the walker in England and Wales is a 103,000 miles network of countryside footpaths and bridleways on which he has a legal right to pass. There are thousands more miles of such paths in Scotland. In addition, there are 20,000 miles or more of urban paths leading out beyond the houses to link up with rural paths, and many more miles of quiet green lanes along which vehicles seldom penetrate far.

Outdoor public recreational areas of this type are also supplemented by some 2,500 square miles of common land, about one-third of which is in Wales with much of the balance being in northern England. Since 1968 more than 100 country parks have opened. With this network already in place, it would appear as if there is no need for further enhancement by abandoned rail lines. But in May of 1988, *National Geographic* magazine reported that "nearly a dozen railroads" have been converted.

The situation elsewhere in Europe has been outlined by Robert Guskind in an article aptly named "Hoofing it in Europe" that appeared in *Planning*, the professional journal of the American Planning Association, in August of 1988. "In German, it's *Das Wandern*, in French *la randonee*, and to the British, "rambling", but whatever the language, walking is as much a European obsession as aerobics and work-outs are to Americans," Guskind wrote. He pointed out that West Germany, which is geographically the size of Oregon, and England, which corresponds in area to Florida, each have more trails than the entire United States. "Both, in fact, claim more miles of walking trails than miles of roads", said Guskind, who added:

> Switzerland boasts of having one mile of trail for every three-quarters of a mile of countryside - a ratio that, if matched in the U.S., would yield seven million miles of trails. . . .
>
> In France, 40,000 miles of long-distance trails have been added in the last 40 years. Little Belgium has added some 2,500 miles of trails in the last decade, the vast majority laid out by private walking clubs with little or no assistance - and in some cases initial resistance - from government agencies.

Guskind was quick to acknowledge that walking is a "national pastime" in many European countries. "One-third of West Germans count themselves as walkers, and part of every German schoolchild's curriculum includes regular "walking days"," he explained by way of illustration. Yet he hastened to add that this alone did not explain the European push for ever-expanding linear recreational locations.

> The reasons are as diverse as the European nations themselves: In some, the stress is on recreation and environment, in others the emphasis is on urban livability and historic preservation.
>
> An added incentive is the economic one of boosting tourism. In Basel, Switzerland's financial and industrial center straddling the Rhine, large parts of the historic district and of the central business district are closed to traffic, either permanently or during business hours. In recent years, Basel's city planners have designed an elaborate system of walking tours on traffic-free streets. Both the pedestrian zones and walking tours, combined with an extensive historic preservation program, are being marketed heavily throughout Europe. Even merchants who opposed the plans at first, fearing a drop in business, are now content with the new arrangement, says Dennis Rhein, vice-director of the city's tourist board.
>
> And some 40 miles outside of Paris, long trails lead through the fertile, picture-perfect fields of the Seine Valley, where the cliffs are still pockmarked with caves used by early man. It is farm country, more down-at-the-heels recently than thriving, but also the scene of new economic experiments. At Villers-en-Arthies, in the middle of a working farm, grey stone barns have been converted into a country inn and conference center. A dozen French teens are studying maps, learning how to be trail guides; adult visitors feast on a six-course gourmet meal or stop in for cooking courses. The French government is openly encouraging such farm conversions and recreational ventures with big tax breaks for renovation and recreational development. *The approach is a central part of France's rural development strategy.* [Emphasis added.]

The European experience has not gone unnoticed in Canada where a firm centered in Toronto has been promoting biking and walking tours in England, Ireland, Germany, Denmark, Austria, Hungary, Spain, Portugal, France, Italy and Switzerland. Butterfield and Robinson was formed in 1966 and, until 1980, focused on student tours of Europe. In the last decade it has begun to market packaged adult and family tours for both walkers and cyclists catering primarily to "upscale" tourists who want adventure in their vacations mixed with the conveniences of fine dining and luxury accommodations. Its experience would seem to be indicative of the growing popularity of this type of vacation. The first adult bike tour of almost 10 years ago attracted 18 participants, while the firm's 1989 publication, "Biking and Walking in Europe", now offers more than thirty possible tours. A typical example is a tour that runs nine days (although shorter and longer ones are available) at a cost in the range of $2,500 to $3,000 (Canadian) per person. (This price does not include air fare to Europe and a "single supplement" of perhaps $325 is applied for those not travelling in pairs.) According to Jill Vardy's account in "Report on the Nation", Butterfield and Robinson had sales of some $10 million in its 1987-88 fiscal year, an increase of $3 million from the previous year, and its tours attracted some 3,500 patrons. More recently, a Canadian Press report that appeared in the *Guardian* of January 8, 1990, indicated that Butterfield and Robinson had organized more than 200 trips in 1989 and had sales of $15 million. A glance at the "Travel" section of any metropolitan Canadian daily newspaper suggests the firm has been joined by others offering a similiar type of holiday centered on bicycle or walking tours.

The European experience has not been lost on Americans. The aging "Baby Boomer" bulge in its population is but one reason pointing to increased emphasis on walking as the "in" recreational sport of the 1990's. According to *National Geographical* magazine in May of 1988 "there are now nearly 150...rail trails in 27 States, with an equal number in planning stages". But this represents a swing of the pendulum, according to Guskind:

> Since the 1930's some 30 percent of the footpaths and trails in the U.S. have vanished under the onslaught of urban development. In 1940, some 200,000 miles of trails led through the national forest system. Today there are only half as many, and a good number of those are actually logging roads.

In contrast, of the 120,000 miles of rail lines abandoned in the U.S. since 1920, only one percent have been turned into pathways by 1988.

That this situation is now reversing itself was signalled in part by the formation of a private, non-profit organization created in 1985. The Rails-to-Trails Conservancy, through its headquarters in Washington, D.C., provides a program of technical assistance, public education, legislation, negotiation and regulatory action, all designed to promote the use of abandoned railways for linear recreational activities. An information brochure from the Conservancy explains its work in these terms:

> Through its national network of contacts in the recreational and conservation communities, the Conservancy notifies trail advocates, local governments and groups of upcoming abandonments; assists public and private agencies in following proper legal procedures; and publicizes rails-to-trails issues throughout the country. In the nation's capital, RTC works for funding programs and simplified regulations to promote rail-trail conversions.

> The experience in the United States stems from a different situation. Railways are privately owned, so with some 3,000 miles of railways that are abandoned each year, the railway companies are often anxious to sell off the property to the highest bidder. In consequence, the Rails-to-Trails Conservancy has pointed out that "for every trail that is successfully created, dozens of other rail rights-of-way are lost to highways, agriculture, unplanned development or other uses". Finding money to acquire the land is a problem that must be met almost on a case-by-case basis and competition from developers in some areas can be very costly. Nevertheless, by early 1988, the Conservancy could point to a list of acquisitions from seven railways that involved more than 1,900 miles of track which had been targeted for conversion into rail-trails.

Some of the mid-western and agricultural-dominated States have been in the forefront of this conversion program. "Several outstanding rail-trails have been created on former C & NW [Chicago and North Western Railway] corridors, including Wisconsin's famous Elroy-Sparta Trail, the oldest rail-trail in the country, and Minnesota's 104-mile Luce Line Trail, the nation's longest fully developed rail-trail. The popular Heritage Trail in Iowa and Fox River Trail in Illinois were also developed on old C & NW rights-of-way," the Conservancy reported in 1988.

The impact of the Wisconsin experience in the tourist industry of that State was recognized by *National Geographic*, when the President of the National Geographic Society wrote: "other trails are distinctly rural, such as the Elroy-Sparta Trail in Wisconsin, which runs through 32 miles of rolling hills, railway trestles, and dark tunnels. Campgrounds, bed-and-breakfast inns, restaurants and bike-repair shops have sprung up along the trail to serve 50,000 vacationers a year." Canadian author Alice Munro also praised the Wisconsin trail in a recent article in *Canadian Living*:

> Two years ago my husband and I discovered the walking and bicycling trails in Wisconsin that have been converted from abandoned railways. Near Blue Mounds, a little west of Madison, on a fine summer morning, we came upon the Military Road Trail. When we are travelling, we find that our staying power is improved if we get about an hour's walk a day, and the trail was exactly what we were looking for. We walked from Blue Mounds to Barneveld, had lunch there in a pub right beside the trail, and walked back to Blue Mounds. We were so elated by this walk that we decided to change the itinerary of our trip to visit the other Wisconsin trails, and we were not disappointed.

The Munro testimonial suggests that proponents of a rail-trail are right in theorizing trails are not only a drawing card for visitors but an inducement for travellers to lengthen their stay.

While Wisconsin has pioneered in this area, other States have been quickly joining the trend to have conversion projects involving abandoned rail lines. More than a year ago, some 110 such projects were underway. In Virginia, the Old Dominion Railway Regional Park, created in 1978, provides a park that is 100 feet wide and 44 miles long between the suburbs of Washington, D.C. and the foothills of the Blue Ridge mountains. The continuous paved corridor attracts cyclists and walkers while an adjacent unpaved area allows for horses. With cross country skiing in winter, the park attracts about a million users a year, ranking it as perhaps the busiest of the converted rail trails in the United States.

The Commonwealth of Massachusetts has moved aggressively into this trend when a $500 million bond issue to protect open space was signed into law in 1987. It allocated $3 million of this for acquisition of abandoned rail corridors and a further $2.5 million for bicycle facilities mainly involved in rail-trail development. Regulatory provisions restricted construction directly on the track area of old rights-of-way, even where the land was no longer owned by the railway, to ensure preservation of the corridor. By the time these developments took place, the Cape Cod area of the Commonwealth had already completed much of its 19.6 mile trail.

The Cape Cod Rail Trail, an eight-foot wide strip of asphalt with a parallel 12-foot wide dirt horse trail, is the longest converted railway corridor in New England. Long-term plans call for an extension to the tip of the Cape, more than 50 miles away. The Trail has been used by local residents for commuting as well as recreation; it has also attracted an estimated 1/2 million tourists per year. The Commonwealth of Massachusetts spent $788,000 to acquire the property and a further $1.05 million for its development with some tunnels or bridges bringing construction costs up to $90,000 per mile.

The American Planning Association reported in October of 1987 that the State of Iowa "leads the nation with 24 of 110 projects nationwide and has mollified much earlier opposition". A citizens' task force in the State of New York called for a 150-mile corridor of parks and trails that would stretch along the Hudson River Valley from New York City to the Adirondack Mountains, while in New Orleans, business leaders were urging the development of a Delta Regional Park along the Mississippi River levees between Memphis and the Gulf of Mexico. The 25-mile Bizz Johnson Trail in rural northeastern California was the longest in California, providing skiing in winter as a supplement to cycling, horseback riding and hiking in the other seasons. Florida appropriated $3 million for a new rails-to-trails program.

Spurred on when the President's Commission on Americans Outdoors recommended a national system of greenways, these examples sparked the interest in linear recreational facilities that has erupted as a major trend in the United States. Just how quickly this trend has been developing is indicated by a *National Geographic* article which appeared in June of 1990 as we were finalizing our Report. "Greenways: Paths to the Future" by Noel Grove examined the growing popularity of linear greenways, including abandoned rail lines converted to trails. His data suggests that in the preceding two years another 8 States had developed trails from abandoned railway lines and the length of such trails had expanded to some 3,100 miles.

The rails-to-trails conversion has not been without opposition. Guskind's report, "Hoofing it in Europe", indicates that in the United States "at least 80 proposed "rails-to-trails" projects are embroiled in legal or political squabbles. In many locales there are competing claims on the old rail lines, either for light rail transit corridors or commercial development. While many railroads, some of which now earn half their income from real estate development, are eager to sell, adjacent property owners often oppose public access to the land."

The federal "National Trails System Act" of 1983 is being challenged in a Missouri class action suit expected to make its way to the U.S. Supreme Court. State law requires the railway rights-of-way revert to landowners when rail lines are abandoned but the pre-empting federal legislation permits interim trail use to be granted to public agencies. Since the American constitution provides a right to property ownership, the issue has become one of a "constitutional takings test" with some 200 landowners, supported financially by the American Farm Bureau Federation, opposing the trails program and seeking compensation from the State for property they claim should revert to them. Leading spokesmen for the landowners "cite problems of security and liability in explaining their opposition to the trails law. However, State officials - and the 14 environmental and civic organizations that have intervened in the case - respond that other trails around the country have proven to be largely selfpolicing, attracting users concerned about the trails' safety and appearance."

Landowners in two Iowa counties have begun a similar law suit, which awaits the outcome of the Missouri case, although the Iowa Trails Council maintains the trails have proven to be economic assets for the area. When one Iowa farmer cut trees and took a bulldozer to a section of the 52-mile Cedar Valley Nature Trail, the negative publicity ultimately culminated in an appropriation of $1 million for trail acquisition and development by the Iowa legislature.

Even without abandoned rail lines, there is evidence that linear recreational land use is growing rapidly in the United States. Revitalized interest in pioneer trails has resulted in increased pressure on the Appalachian Trail, ...

> which in 1937 became the first two-thousand-mile-long hiking path in the United States and the first interstate ridgeline greenway park: a linear inland strip of wilderness that parallels the Atlantic Ocean and runs from mountaintop to mountaintop down the East Coast. The trail begins on the top of Mt. Katahdin, in Maine, and eventually climbs to the top of Springer Mountain, in Georgia, after crossing through fourteen states.
>
> Two more long-distance interstate trails are now being blazed through wilderness lands---these in the Western United States. The Pacific Crest Trail, twenty-five hundred and sixty miles long, is almost a mirror image of the Appalachian Trail; it's ridgeline path along the Cascades and the Sierra Nevada that parallels the Pacific Ocean and extends from Canada to Mexico. And the Continental Divide Trail, through the peaks of the Rockies, will eventually provide a hiking path of more than three thousand miles between Canada and Mexico, once the Forest Service and other groups select and mark a route for the Colorado-New MexicoMexico segment of the trail. All three trails are now National Scenic Trails, and thus part of the national-park system. And two years ago the President's Commission on Americans Outdoors, a bipartisan panel established by the Reagan Administration to think about the country's recreational needs in the first decades of the twenty-first century, proposed creating a national "green mosaic" of hiking trails, jogging trails, bicycle paths, bridle paths, and scenic highways and byways---a "network of greenways across the country" that would link every community to all the state parks, state forests, national parks, and national forests in the country, and "tie this country together with threads of green that everywhere grant us access to the natural world."

> The commission also proposed setting up a new national outdoor trust fund authorized to spend up to a billion dollars a year to help bring the green mosaic and other recreation projects into being. The commission's chairman, Governor Lamar Alexander, of Tennessee, wrote to President Reagan that he foresaw, as he tried to look ahead, "a prairie fire of concern and investment" to preserve and create outdoor opportunities for the next generation of Americans.

A fourth interstate trail, one that follows an east-west route, is now underway. According to *National Geographic* in June of 1990, the North Country National Scenic Trail, which is proceeding from the Adirondacks to the Dakota prairie, has a goal of 3,200 miles and will be the longest trail in the United States.

The State of Vermont - which has often been a leader in preserving rural heritage for the benefit of economic development through the tourist sector - has moved to emulate the British example. Its "Hike - Inn to Inn" program provides tour organization among seven country inns, many of which date from the early nineteenth century. Travellers can move along the route, enjoying 6 days of hiking for a set price that includes breakfast, trail lunch, dinner, shuttle, tax and gratuity.

Another state that has seen the potential of linear recreational facilities for both its own residents and its tourism industry is Colorado. Although the 469 miles of the Colorado Trail was not derived from an abandoned rail line, the development of that trail was sufficiently novel to be examined in some detail. Conservationalists, led by a regional director of the U.S. Forest Service, urged the development of the trail in 1973 in order to link up many of the existing small trails scattered about the State and to relieve more fragile areas from the environmental pressures of over-use. A non-profit Colorado Mountain Trail Foundation was formed with a volunteer activist named as trail supervisor. Under her direction, the trail was built by some 4,000 volunteers over 15 years. "Volunteers surveyed the land, built the trail, constructed the bridges, wrote the guidebook, charted the topographical maps." The effort required the removal of trees and stumps, massive rocks and breaking ground in mountainous terrain - accomplished at a cost of about $500 (U.S.) per mile (compared with a cost of $14,000 (U.S.) when the American Forest Service builds trails using contractors). Volunteer trail-blazing moved slowly until 1984 when a new strategy advertised "work vacations" in national hiking magazines. The Governor of Colorado and his wife were photographed with pickaxes. The idea coincided with a growing trend in tourism - adventure holidays - where, for example, visitors pay to spend their holidays in activities that constitute work for others. This "Tom Sawyer" principle proved sufficiently popular that a three-foot footpath designed for hikers, mountain bikes, horseback riders and, in winter, crosscountry skiers was completed four years later. Thirty volunteer crews continue to maintain the trail with plans to add new routes, new access points and a network of camping shelters.

Volunteers have also been credited with building many other trails. Much of the Florida Trail, that is targeted to be 1,000 miles long is one example; some 740 miles of its hiking paths are now completed.

Clearly the United States has begun to discover what Europeans have known and cherished for years: the value of linear open spaces for sports and recreation.

In Canada, trails have been provided in public parks but the emphasis, as in the United States, has tended to be placed on outdoor recreation requiring either expensive facilities or equipment or both. Historically, a "freedom to roam" the countryside was assumed or taken for granted. Country roads were deemed sufficient for such pursuits, if anyone gave the matter much thought. There has been little attention paid to either public corridors or abandoned rail lines, but there are signs this is changing and as rail abandonment becomes a reality, it may be anticipated that more rails-to-trails will be sought to provide rural economic development as well as satisfaction of recreational and environmental interests.

After her experience in Wisconsin, Alice Munro was prompted to join those urging trails along abandoned rail lines. She makes a number of compelling arguments for her position, best told in her own words.

> Some 15 or so years ago, I returned to Ontario to live, not to the place where I grew up but to a small town nearby and to essentially the same landscape. But things have changed. The elm trees are gone - the last one on our flats, a seeming survivor of the Dutch elm disease, fell in a storm of 1977. The bottomlands are no longer pastured, for reasons I have not investigated, and have grown up in coarse vegetation tall grasses, stinging nettle, joe-pye weed, wild parsnip, thistles, goldenrod, hawthorn and scrub willow, to name only a part of it - and the walkable land is gone. The local rivers and streams are not poisonously polluted but are often choked with various kinds of algae and water plants overstimulated by fertilizer runoff from cultivated fields. Even if I were to hack my way through the jungle of vegetation, the river doesn't have the swimmable water I once knew. More and more rural land is posted against trespass, and when I walk in the country, I would seldom think of cutting across a piece of private land, posted or unposted, unless I had the owner's permission. *The countryside* of southern Ontario *was once an unofficial recreation area for local people. For a variety of reasons* - too many people, larger cultivated fields, the unpastured bottomlands - *that day is gone. There has been no adequate replacement.* . . .
>
> When you see valiant cyclists pumping along the thin edge of paved highways with the traffic roaring by, you can appreciate the appeal a controlled trail has for them, and you can also appreciate that the Ontario *government, despite its advocacy of outdoor exercise, is doing nothing to facilitate cycling as an activity that large numbers of people could enjoy.* . . .
>
> I've turned my celebration of southern Ontario countryside into a plea, because I really believe that *access to the land is a right and a necessity, just as paved roads and schools and hospitals are.* I believe that it's important to our well-being. I think that *people who see the landscape in this way will give thought to protecting and preserving it. The railways have been heavily subsidized, so surely we all have some claim on the lines when they are abandoned.* [Emphasis added.]

Some Canadian jurisdictions are beginning to realize the potential for linear recreation. Part of an old logging rail line near Victoria, B.C., for example, has been converted into a rail trail. Many provincial parks map out numerous hiking trails. There is a National Trail Association of Canada, centered in Nepean, Ontario, which is "an affiliation of volunteer trail-managing, recreation and environmental groups working to build a 10,000 km. foot trail from Cape Breton Island, in Atlantic Canada, to Vancouver Island on

Canada's Pacific Coast." In Ontario alone, the Federation of Ontario Hiking Trail Associations includes eight associations, of which the most prominent is the Bruce Trail Association.

A volunteer charitable organization incorporated in 1963, the Bruce Trail Association now consists of 7500 members belonging to nine Bruce Trail Clubs. An estimated 800 volunteers who dedicate an estimated 76,800 hours of work each year have been responsible for negotiating the route for the Bruce Trail and for its development, management and maintenance. The idea for the Bruce Trail was developed in 1960 by four volunteers and the trail was first completed in 1967. It is anticipated at least 10 to 20 years will be needed to complete the ultimate goal that will enable the Association to own the entire trail corridor, which currently has rights-of-way negotiated with over 400 private landowners.

The Bruce Trail provides a continuous footpath from Queenston to Tobermory along the Niagara Escarpment, a distance of 739 km. It is, however, more than a single footpath; it is an open space corridor linking parks and natural areas. This corridor includes significant natural acres and natural historical, cultural and archaeological features along the Niagara Escarpment. As well as the main trail, there are subsidiary routes connnected to the main trail and providing linkages with parks and natural areas not located on the main trail. Components of the system also include access points and overnight rest areas. The Bruce Trail is for pedestrian travel only: mechanized vehicles and horse riding are not permitted. Marked by signs and small white blazes painted on trees and poles (one blaze indicates straight ahead; two blazes indicates a turn), the actual physical trail itself is normally five feet in width. The location of the footpath is not necessarily fixed within the Bruce Trail corridor. The corridor varies in width and this variation is in relation to the perceptual zone on either side of the footpath, a zone within which the trail user's impressions of the surrounding environment is most acute. This may range from less than 50 feet to more than 200 feet - the latter being found where the perceptual corridor is one of a panorama landscape. There is no fixed width to the corridor over which the Association has ownership or control and this width varies from 100 to 1500 feet, the average being in the range of 330 to 495 feet. The Association endeavours to have ownership of or control over a corridor sufficiently wide to provide a buffer zone on either side of the footpath. While the Association prefers to own the land the Trail crosses, the Trail is composed now of a mixture of land tenures. A comprehensive plan for the Bruce Trail, completed in 1989, found that 184.1 km. (24.9%) of the Trail used travelled roads, 79.5 km. (10.8%) used road allowances, while 271.6 km. (36.8%) crossed public land and 203.7 km. (27.5%) used private land. Actual routing of the trail was not always constant with closures and re-routings taking place over time for a variety of reasons.

The "Bruce Trail Comprehensive Plan" of 1989 is an extensive document, demonstrating a professional calibre of planning used to achieve the goals of the project. In its "Volume I: The Plan" there is nearly 150 pages of text on information about the Trail, standards to be met in achieving the objectives of the Trail program, and sample documents and checklists that would enable volunteers to assemble the Trail. While much of this material is invaluable to anyone involved in trail development (not necessarily to duplicate these standards but, as a minimum, to provide guidance on the components to be considered), we were particularly interested in a section of this document that outlined the "Recreational, Educational and Economic Benefits of the Bruce Trail". At pp. 18-19, this was reported as follows:

For over 20 years the Bruce Trail has enjoyed an international reputation as a long distance hiking trail. Located in Canada's most heavily populated region, the Bruce Trail and the Niagara Escaprment provide unique, high quality recreational opportunities to a growing urbanized populace as well as to visitors from outside the region. At the same time the trail and its environs provide valuable opportunities for environmental and outdoor education and study.

User research conducted in 1986 (Ernest, 1987) found that the Bruce Trail, excluding sections within developed parks and conservation areas, provided at least 450,000 user days of recreational activity in 1986. These were recreational opportunities that simply would not have existed were it not for the Bruce Trail and the BTA [Bruce Trail Association]. *When use of the Bruce Trail in developed parks is included, the total number of user days is well over 1 million per year. An estimated 300,000 persons use the Trail once or more in a year. This level of use exceeds the visitation in the vast majority of Provincial Parks.*

A recent survey (Insight Canada, 1989) showed that *almost 60% of southern Ontario residents living on or near the escarpment have used the Bruce Trail.* Awareness of and support for the Bruce Trail were also found to be very high.

The 1986 research (Ernest, 1987) used 20 user registries to collect data on over 9,400 trail users (outside developed parks). Use levels varied greatly depending on the location. *The average duration of days hiked was 3 hours.* Five percent of trail use was by persons on overnight hikes (backpackers). *Average group size was 3.4 people.* Males accounted for 58.5% of trail use. Persons under 45 years were more likely (relative to their proportion of the provincial population) to use the trail than those over 45.

Trail use was highest in the fall and summer (29.8 and 28% of total annual use respectively). Spring use accounted for 24.7% of annual use, while use was lowest during winter at 17.4%. Interviews with trail users (Ernest, 1987) found high levels of user satisfaction with the trail experience. Users also had a generally good impression of the quality of management of the trail.

The Bruce Trail is also valuable as an educational resource. Fourteen outdoor education centres operated by school boards are located on or near the trail as are 7 other interpretive centres run by Conservation Authorities and the Royal Botanical Gardens.

Programs at these facilities make extensive use of the Bruce Trail. Countless school and youth groups also visit the Bruce Trail each year combining healthy physical activity with the promotion of awareness of and respect for the unique natural environment of the Niagara Escarpment.

The Bruce Trail Association, through its member clubs also runs programs of over 700 hikes and other events which are open to the public. A wide range of information on hiking, conservation, the trail and the escarpment is made available to the public by the Bruce Trail Association and the BTA and its Clubs make as many as 50 publicity and public education presentations each year. Besides managing and maintaining the 739 km. Bruce Trail the volunteers of the BTA maintain over 100 km. of affiliated side trails. The Bruce Trail connects with the Ganaraska Trail, the Grand Valley Trail, the Guelph Trail and the Merrit Trail as well as many shorter trails to form part of an extensive system of hiking trails in

> Southern Ontario. The Association works to promote an awareness of environmental ethics and the "Trail Users Code". Promoting an appreciation of the Niagara Escarpment and the need to conserve it is also an important activity of the BTA, as is the promotion of conservation and private land stewardship in general.
>
> Local economies also benefit from the existence of the Bruce Trail since *over half of all trail users travel over 50 km. (one way) to use the trail.* The BTA attempts to encourage local businesses by making trail users aware of the services they provide. *With over 30,000 out-of-province visitors using the trail each year, many for extended periods, the provincial economy as a whole clearly benefits from the Bruce Trail.*
>
> The benefits of the Bruce Trail are not just recreational, educational or economic. As a part of the Niagara Escarpment Parks System the Bruce Trail plays an important role in the preservation of the unique environs of the Niagara Escarpment as a precious natural resource for all the people of Ontario. Amazingly, all the benefits which stem from the existence of the Bruce Trail can be traced to the efforts of a relatively small but very dedicated group of volunteers with an idea they believe in. [Emphasis added.]

An effort made to determine the direct economic benefits of the Bruce Trail has led to the conclusion that the total direct economic impact of the Bruce Trail is estimated conservatively to be $30 million annually.

The City of Edmonton, Alberta, has developed an urbanized trail that focuses on history and provides an example of partnerships at work in the creation and development of a project of this type. Edmonton's Heritage Trail connects historic sites and visual landscapes with public places. In addition, the plan for the Heritage Trail calls for a unique outdoor museum composed of a series of nine Interpretive Galleries that relate the story of the city's history, making the linear park an educational and cultural experience as well. The partnership concept has meant participation in the project not only by three levels of government but also by other agencies and organizations, ranging from the Edmonton Public School Board to the Rotary Club of Edmonton Jasper. The multi-use dimensions of the Heritage Trail are further highlighted by the fact it is designed to accommodate the physically handicapped, the elderly and children, as well as pedestrians.

The rising interest in providing for more linear recreation in Canada, as exemplified by the Bruce Trail and the Heritage Trail, is not surprising in view of a Canadian fitness survey, undertaken in 1988, which showed that 63% of the population was engaged in recreational walking.

On the figurative completion of this circuit of pathways elsewhere, we returned for a fresh look at the railroad in this jurisdiction.

The story of railroads on Prince Edward Island is also the story of the Province's entry into Confederation. In 1870, a coalition government, formed under the leadership of Premier J. C. Pope, agreed not to intervene in Confederation, but the new Government soon started a new question, one which took the Island by surprise and set it ablaze with excitement and public meetings: THE RAILROAD QUESTION!

On April 17, 1871, *The Railway Act* was passed authorizing the construction of a railroad through Prince Edward Island. The first line to be constructed was to connect Alberton and Georgetown, touching at Summerside and Charlottetown. The contract was awarded to Schrieber and Burpee of Saint John, at a price of 2,845 pounds sterling per mile, for the roadbed and superstructure of a narrow gauge (3'6") line. The choice of gauge undoubtedly reflected the stipulation to keep cost down. In the early development of the Island railway, it became obvious that a number of miscalculations and blunders would force the cost of the railway's construction well above reasonable overruns. For example, the overall cost of rights-of-way was estimated at $35,000. Within four years, with the railway only two-thirds completed, $253,739 had already been paid. In an effort to reduce cost, some experiments in economy were tried, often ending in unhappy consequences. Wire fencing, then a novelty in Canada, was substituted for the specified post-and-board fences. Cattle, horses, sheep and hogs alike paid no attention to it, tearing it down or becoming entangled in it. There was a serious outcry: the contractors blamed the Government, the Government blamed the contractors. It turned out that neither party had any previous experience with wire fencing!

In the late months of 1872, the Prince Edward Island Government realized the colony could not endure the drain on the Provincial Treasury to complete the railway. A public meeting at Charlottetown took up the cry and the sturdy colonists, who had scoffed at Confederation, realized that the issue lay between their Island pride and their pocketbooks. In true mercantile tradition, the pocketbooks won! On July 1, 1973, the Province of Prince Edward Island entered Confederation with a railway that was far from complete. The responsibility for the construction/completion of the railway was assumed by the Dominion Government - part of the price of Confederation.

The line was completed and opened for traffic on January 4, 1875. Various branch lines were added in 1885, 1905, 1908 and 1912. The Prince Edward Island Railway and the Intercolonial Railway became known as the Canadian Government Railways and remained as such until amalgamated with the Canadian Northern Railway to form the Canadian National Railway in December, 1918. It was not until 1913 that car ferries, capable of negotiating the Northumberland Strait, became available. In that year the construction of the necessary terminals began at Cape Tormentine and at Borden. Due to the outbreak of the First World War, the quays were not completed until 1917. In the winter of 1918/1919 an ice-breaking car ferry, the "S.S. Prince Edward Island", with a capacity of twelve rail cars, was placed on the run. The service required the change of the Island railway to the wide (4' 8 1/2") gauge. This changeover to wide gauge was not completed until 1930, marking the final stages in the development of the railway system on the Island.

Railway abandonment began less than three decades later. In the mid-1950's construction of a new Hillsborough Bridge, situated at Charlottetown, was completed. Because the new bridge did not provide for rail access, a section of railway line (the Mt. Herbert Spur) was rendered obsolete. In 1959, CN made application to the Canadian Transport Commission to abandon the Mt. Herbert Spur. Seven years later, with the approval in hand, CN proceeded to dispose of its holdings along the Mt. Herbert Spur. The rail rights-of-way extending from the Hillsborough Bridge to the Mason Road were conveyed to the Province and that portion of rail rights-of-way extending from the Mason Road to the Raynor Road in Mt. Herbert (a total of approximately 25 acres) was conveyed back to the adjoining landowners.

On October 25, 1969, another chapter in the history of the Island's railway came to a close, when the last passenger-carrying train made its final run. Over the next decade, freight service also continued to decline, and in November 1982, the Canadian Transport Commission conducted public hearings to consider applications from CN to abandon the following rail lines:

Mt. Albion to Mt. Herbert	50.6 acres
Lake Verde to Vernon Bridge	59.0 acres
Uigg to Murray Harbour	395.0 acres
Cardigan to Georgetown	44.0 acres
Baltic to Elmira	63.0 acres
TOTAL	611.6 acres

In the spring of 1984, the Canadian Transport Commission issued orders authorizing the abandonment of these rail lines.

In December of 1987, Executive Council (D793/87) approved the purchase of all 611.6 acres of surplus CN rights-of-way for the sum of $61,160 ($100.00 per acre). The conveyance of the CN's surplus rail rights-of-way was subject to terms and conditions that required the Province honour all existing farm crossing rights and assume any existing leases, licenses and agreements which CN had entered into with various parties, giving certain rights to use property along the present CN lines.

The status of rail abandonment applications in the Province as of March 31, 1988 was outlined in the Annual Report for the Department of Transportation and Public Works for the year ending March 31, 1988, in Table 1, as follows:

Table 1

Lines for which abandonment applications have not been filed

Kensington Subdivision (Emerald to Linkletter)	19.45
Borden Subdivision (Charlottetown to Borden)	42.40
	61.85
TOTAL RAIL SYSTEM (miles)	279.90

Line	Mileage	Miles Abandoned	Miles Ordered Kept In Service	Date of CTC Order	Order Subject to Review
Murray Harbour Subdivision (including Vernon and Mount Herbert Spurs)	56.75	34.55	22.2	Feb. 23/85	Feb. 23/89

Montague Subdivision (including Georgetown Spur)	30.44	4.83	25.61	Nov. 23/84	Nov. 23/89
Elmira Spur	9.85	4.85	5.00	May 10/84	May 10/89
Souris Subdivision	55.02		55.02	Aug. 5/85	Aug. 5/90
Kensington Subdivision (Linkletter to Tignish)	65.15		65.16	Nov. 14/85	Nov. 14/88
Totals	217.22	44.23	153.01		

Developments in the months after this table was prepared suggested the entire rail system was to be abandoned in the immediate future, a plan that has been unfolding during the tenure of this Royal Commission.

More than a century after its construction first began, the railway line in Prince Edward Island meanders its way from east to west throughout almost the entire province. Beginning just a few miles short of East Point, it ends in Tignish, not far from the most westerly tip of the Island at North Point. In between, it's route can be traced through a number of the traditional settlements of the Province: St. Peter's, Morell, Mount Stewart, Hunter River, Kensington, Summerside, O'Leary, Alberton and, finally, Tignish itself. In addition, there are branches, providing links with Charlottetown, Borden, Vernon River, Murray River, Murray Harbour, Montague, Georgetown, Cardigan and Souris. When the railway was built, these communities actively sought the railway, for its location spelled economic development or loss of it. The result is a ribbon of real estate, almost 280 miles long and generally only 99 feet in width. In some of the more urban centres, this width shrinks to 66 feet, although it may be as much as 300 feet where there has been infrastructure such as train stations and loading ramps. *If this corridor is to be available for alternative usage, we feel it appropriate that its new use be aimed at providing these communities with new economic opportunities.*

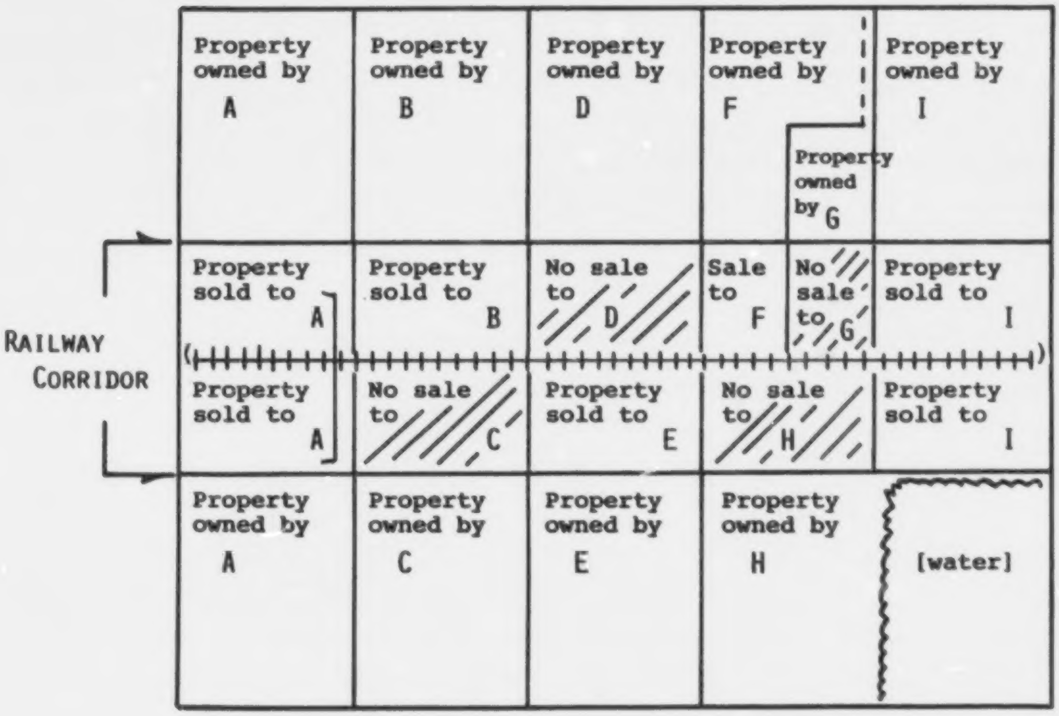
We understand that ownership to railway lands rest in the federal government which, if it has no perceived use for the property, will make it available to the Province. Should these events unfold in the future, as many anticipate they will, the Province will be in a position to determine the ownership and/or use of this corridor.

We have not examined the title documents to this property. It may well be that some grants from original property owners were conditional so that title would revert to the successors in title of the original owners once the property is no longer required for a railway. Even if this impediment exists in isolated cases, there is considerable merit in retaining title wherever possible to the lands already in public ownership for they represent a linear land base that does link the Province, not only from tip to tip, but also to various population centres throughout the Island. Such a base could prove useful for the future, perhaps as a utility corridor, perhaps for a futuristic transportation or communications network as yet undeveloped or even conceived.

To lose this land base could prove to be a short-sighted and costly lesson that, in future years, would be deeply regretted. A study done by the U.S. Rails-to-Trails Conservancy points out the contrasting costs using figures supplied by Virginia sources in relation to the Washington and Old Dominion Railroad Regional Park, the lands for which were acquired in 1983 at a cost of $5.2 million while "...the cost of assembling the right-of-way for a comparable portion of Interstate 66, a new highway which runs roughly parallel to the W. & O.D. was $62.8 million (in 1983 dollars) [with the] calculation...extrapolated for the highway's greater width." Other sources contend that the "soft costs" alone (that is, the expenses for legal fees, surveys and so forth, but not expenditures for the land itself) would be in excess of $100 million today if the assembly of land for the Appalachian Trail were just commencing. The Province of Prince Edward Island is no stranger to the high cost, both in time and effort, as well as money, required to assemble a land parcel for a need that arises but that has not been foreseen earlier. For these reasons, *a linear corridor of property that spans the Province should be treated as a valuable asset in the public domain.*

If the *sale* of the rail line is to be made available to adjacent landowners engaged in agricultural pursuits, we predict this would create numerous conflicts. Can one business interest be singled out for special treatment? Might not others want adjacent properties for development, in certain instances, thus severing the open space corridor not only in terms of land title but also visually? For some property owners with land abutting a rail line that, in turn, runs along water frontage, acquisition of the lands could be a windfall unless the lands were sold "at fair market value". But if the lands were sold to adjacent owners, in areas where the railway lands have different owners across from one another, neither may want to acquire all or a portion of the rail land. In consequence, some parcels could remain as little patches of lands owned by the Province, quite possibly without access. As Figure 1 illustrates in simplistic fashion, the resulting pattern that could emerge if the rail line were offered for sale would make little sense in a total perspective.

Figure 1


Property owned by A
Property owned by B
Property owned by D
Property owned by F
Property owned by I
Property owned by G
RAILWAY CORRIDOR
Property sold to A
Property sold to B
No sale to D
Sale to F
No sale to G
Property sold to I
Property sold to A
No sale to C
Property sold to E
No sale to H
Property sold to I
Property owned by A
Property owned by C
Property owned by E
Property owned by H
[water]

The only feasible method of dealing with such a problem would be a transfer to adjacent landowners through a gift. But, here, we pause to consider the Alice Munro argument: given that the railway has been the beneficiary of public funding for many years, why should one of its key assets be given away to the benefit of a few?

Additionally we foresee considerable problems in logistics if the railway property were to be gifted - problems that may be present if the property is sold to adjacent landowners but exacerbated where there is simply a process of gifting. A straight-line grid of boundaries, as shown in Figure 1, may not present difficulties in deciding who gets what, but property boundaries may not be an even configuration of right angles along a corridor of parallel lines. Some property owners may have small frontage on the rail line because they own an irregular shaped parcel of land. How could their share be determined? What would be the proper "slice" where the railway owned more than the traditional 99-foot corridor? How would railway property be allocated in an area within municipal boundaries? Or in an area where the railway owns a parcel of land around a station or shunting line?

Getting rid of railway lands could involve the Province in a monumental exercise with multiple arbitrations and boundary line arguments once policy decisions on these matters was determined. The Province would have to retain its ownership in the many areas where the railway lands intersect roads. The situation with respect to private rights-of-way would need to be given consideration on a case-by-case basis to ensure no transfers prejudicially affected access to lands traditionally accessible by means of private railway crossings.

We point out all of these factors to indicate that the transfer of railway property to private ownership is both shortsighted and far from simple.

For all of these reasons, we recommend most strongly

- **THAT in the event the ownership of railway lands is acquired by the Province of Prince Edward Island, title should remain in the public domain and ownership rights should not be transferred by gift, sale or otherwise to private owners.**

What use, then, should the Province make of this land corridor?

There are two competing suggestions being put forward, one of benefit to individual landowners in the agricultural sector, the other proposing a recreational use of benefit to all Islanders and to the tourism industry.

Even if the rail lands are not sold or gifted, the land could be leased for agricultural use, but (except in very limited circumstances discussed later) we are not recommending this. Much of the land owned by the railway is very marginal agricultural land. The land is not needed for agriculture. As we have discussed elsewhere in this report, there is ample farmland available and vacant land suitable for farming is not scarce in the Province. Benefits that would be derived from agricultural usage would accrue to adjacent landowners, but the benefit to the industry as a whole would be no more than the sum of the benefits to the individual landowners. Furthermore, if the land were made available for agriculture use, whether by transfer of title or leasing, there would be nothing to ensure its use for agricultural purposes (unless this was a leasing condition - and, in that case, there would be little incentive to enforce such a condition with an extremely limited market of persons interested in using the small parcels of land involved in this type of arrangement). Indeed, the use of the land for agricultural purposes is advocated more from the standpoint of individual convenience than from productivity gains from the small acreage involved. The other thrust of the argument for agricultural usage is a litany of potential dangers that farmers perceive would arise from public passage if the land corridor is dedicated to recreational pursuits. Many of these concerns, we feel, can be adequately addressed if the land is developed for linear recreation.

The second proposal calls for use of this property for public recreation. While there are numerous golf courses and rinks in the Province, there are few facilities available for linear recreational activities, particularly within local communities. Beaches are, of course, available for walking but the ideal season for comfortable strolling along the beach is limited and, for many people, this form of recreation necessitates a car drive first. Biking is a risky business along many paved roads. Parents would undoubtedly feel more comfortable to have their children cycling along a pathway that is not accessible to automobiles and transfer trucks. More mature cyclists venturing along busy arterial highways would be more secure on by-ways.

There are some hiking trails in the Province, described in the 1989 "Visitor's Guide" in this passage:

> HIKING
>
> There are three marked nature/hiking trails within the Provincial Parks system, and six associated with the Prince Edward Island National Park. They range from 1 to 5.5 km in length.
>
> In the Dalvay-Stanhope are of the National Park, trails called Bubbling Spring, Farmlands and Reeds & Rushes provide a variety of experiences. Near Green Gables house in Cavendish, trails named Balsam Hollow and Haunted Woods reflect Lucy Maud Montgomery's affectionate association with the area in her childhood. The Homestead Trail, a combined hiking and cycling loop 5.7 km long, starts at the Cavendish (National Park) Campground. . . .
>
> The nature trail in Strathgartney Provincial Parks skirts woodland and fields, and in Mill River Provincial Park takes in shorefront area also. The trail at Brudenell River Provincial Park is actually a wildflower garden.
>
> DEMONSTRATION WOODLOTS
>
> There are six demonstration woodlots on Prince Edward Island, established by the provincial Department of Energy & Forestry to provide woodlot owners with information on proper management techniques and to promote the recreational use of Island forests. All are accessible by vehicle (see the highway map for exact locations) and include signed interpretive trails of 1 to 1.5 km in length for hiking and cross-country skiing.

It would appear that many of the existing hiking trails are concentrated in tourist areas, not usually in areas readily served by local residents. The length of the presently available trails also suggests the "hiking" usage was not ascribed to them by anyone familiar with dedication to the sport, for many of those who regularly walk as a recreational sport or an exercise would not be particularly challenged by trails that can be covered in less than an hour.

The situation is one of even less limited opportunity in respect to winter sports. Cross-country skiing is available at Brookvale Provincial Ski Park, which recorded 41,700 users over its 1987-1988 season. The 30% increase it experienced from the previous year may have been a reflection of weather conditions that resulted in a season longer by some three weeks. But the popularity of the sport cannot be denied. While cross-country skiing is also available at Mill River and Brudenell, the statement contained in the 1988 publication "Bed and Breakfast Country Inns", produced by the Bed & Breakfast and Country Inns Associations of Prince Edward Island with the assistance of the provincial Department of Tourism is a fanciful misrepresentation of the current situation. "For cross-country skiers we have some of the most beautiful snow-covered countryside anywhere, with almost limitless possibilities for a variety of trail experiences," says the brochure. We do not quarrel with this assessment of the landscape, but the "limitless possibilities" are perhaps nothing more than "possibilities" unless more public trails are made available for cross-country skiing.

The sport of snowmobiling is even less recognized in the public domain. While the Island Snowmobile Club Inc. indicated in its appearance before the Royal Commission that it was assembling a trail system for its 1989/90 season, there have been no trail facilities specifically developed for public snowmobiling pursuits in the past.

Infrastructure to enable the physically disabled to enjoy public parks and recreational facilities may exist as a supplement to these amenities but we are unaware of any outdoor linear recreational areas created with the needs of the disabled as a primary consideration. Where facilities are accessible to the disabled, this accessibility has been incidental to a design primarily aimed at other users.

The need for linear recreational facilities is not just a product of changing sport trends. It is true that the increased emphasis on healthy lifestyles with more outdoor exercise is a factor. So, too, is changing demographics with "aging Baby Boomers" becoming more active in individual and less taxing activities - less jogging and more walking, for example, or less hockey and more cross-country skiing. But, aside from preferential changes, there is an alternative outlook in the countryside. As Alice Munro has pointed out, at one time rural dwellers regarded the whole area as their playground and land owners were not prone to regarding neighbourly strollers through the "back 40" as trespassers. Urban dwellers had country cousins or grandparents with open farmland and woodsy areas. Now, both urban and rural dwellers may not know landowners - who may even reside elsewhere - and many landowners do not welcome intrusions by strangers. These conditions are at least perceived as existing - whether or not they mirror actual reality in any given place.

Moreover, recreational users have grown accustomed to "structured" facilities. They go to a gymnasium or a rink or a golf course. Unless given some signal that the use is suitable, they are no longer accustomed to the flexibility and informality that perhaps characterized an earlier era. Nature alone no longer signals an inviting trail; the user wants some sign, however small or subtle, that intrusion is welcome.

Sports and recreational facilities in the Province now represent a variety of public and private partnerships: some are wholly public, some wholly private but, we submit, virtually all of these have involved some mixture of public and private inputs. Even the National Park system, which represents one end of this spectrum, calls for volunteers for beach clean-ups. At the other end of this range there are privately owned and operated clubs and facilities, few of which have not benefitted at one time or another from government-funded programs to assist in some construction of or improvements to facilities, or in some financial assistance to aid in providing a special event. This mix between public and private involvement in recreational and sporting endeavours is further layered by involvements with municipalities, non-profit organizations, businesses, citizens who volunteer time or donate goods or money and so forth. Partnerships at all levels of society have long been recognized as necessary ingredients to ensure the successful operation of sports and recreational activities. Use of an abandoned rail line for a trail program should not be an exception to this proven formula.

This is not to say that we see the use of the abandoned rail line as simply a measure of expanding recreational potential. We feel that its future usage should involve a maximum potential for the entire surrounding countryside, taking into account local assets and interests in a variety of ways. To facilitate this, the rail line property should not be seen as simply a corridor but also as a series of many small corridors, each of which lies in the center of a local area that has, in its development of the rail property, integrated it with community heritage, infrastructure and resources.

We recognize that this is a time of financial constraint. It would be irresponsible and impractical for us to recommend that the Province develop a paved corridor of some 280 miles in length and charge it alone with maintenance responsibilities in perpetuity. Indeed, we feel we cannot recommend the establishment of a trail system of any kind unless we are prepared to present some blueprint for its development and maintenance that could make it a feasible reality. Consequently, we are prepared to make suggestions in this regard. Our ideas may require modification. They may be rejected by the public-at-large and, dependent as they are on public enthusiasm, they will not ultimately succeed without widespread endorsement by both government and citizens throughout the Province. But we do feel that our proposals would leave the Province and many communities with little to lose in the event of failure and, in the face of success, much to gain.

We understand that with rail line abandonment, the railway owner customarily removes the rails and other assets, leaving only natural features behind. This vacating exercise may or may not include a considerable amount of "railway rubbish" by way of abandoned hardware, decaying and damaged rail ties and so forth that would require clean-up if the property is to be restored to a natural appearance. But, in essence, with the removal of the rails there is already a hiking trail, albeit rough. It is, however, a trail soon to succumb to Mother Nature if it is not used or maintained. Whether it is to be upgraded in its appearance from such a primitive status and the extent to which, if any, that it is developed into a trail that is suitable for uses other than walks through the bush is dependent upon the construction and maintenance efforts that go into the trail project.

One of the first advantages we see of this project is that it can be developed and upgraded over a number of years, as quickly or as slowly as the general public will determine.

We do not envision a project that calls for conversion of the abandoned rail line into a 280-mile trail in a few weeks or months. We see this as a long-term project that could take 5, 10, 15 or 20 years to "complete" in terms of reaching its maximum potential. Indeed, it might never be "complete" in some areas if its popularity does not spark in particular locales, if changing future lifestyles reverses the current trend in linear recreational activities, or if some alternative transportation or communication need for a public land corridor creates a priority usage for the network. But even with that eventuality the relatively undeveloped status of the land base means the project can be "undone" without massive loss or expenditure.

A second advantage we see to this project is the requirement for development. It need not call for a massive capital outlay or construction costs. The existing rail line includes some 23 bridges and trestles considered to be in "fair to poor" condition by transportation analysts. While rail abandonment means the railway removes its assets, we understand these structures would likely remain in place. No doubt these structures would require major upgrading and repairs if rail service were to continue or if they were to be used for other transportation requirements in the years ahead. But we submit that the needs and standards for pedestrian uses are very different. Where necessary, these structures could be closed or removed (and the trail re-routed) or the structures could be modified to be compatible for recreational use only. Those who point to the existing railway infrastructure and see the trail conversion project as necessitating massive expenditures for repairs and upgrading to these structures are looking at the project largely in a transportation context, not a recreational one.

Much of the work done elsewhere in developing and enhancing trails is simple, manual labour. Use of machinery appropriate for road building, for instance, normally has little or no role to play and, indeed, such equipment would be too disruptive to the natural environment to be useful in many circumstances. Consequently, a principal component can be unskilled labour for jobs that can be done virtually on a year-round basis. Our concept of the development and maintenance of the trail system does not call for a large paid labour force, but the project does have the potential to be a labour intensive "job creation" venture in almost any locale in the Province for members of the work force who do not have a high level of skill development.

We do not see the rail trail as a single 280-mile corridor of a uniform width throughout the Province. Instead we see a variable corridor from place to place. Perhaps, over time, a uniformity would develop (and this could even be planned as a long-term goal). But as a short-term objective of, let us say, 10 years, we would suggest that in places the corridor would be nothing more than a primitive walking trail, a footpath through the woods. It might be sufficient to accommodate snowmobiling or even cross-country skiing in winter, but it would not necessarily be suitable for cyclists. Nor would it be attractive for walkers who want a more park-like setting for their recreation or disabled users who require a more refined infrastructure in order to use the trail. But, in other areas, the trail would be more manicured, sometimes even offering a paved surface three or four feet in width. Some trails, or parts of them, would be groomed under careful planning and supervision to ensure vistas are fully appreciated. Other sections, particularly in municipal areas, could be akin to a park with existing natural vegetation perhaps being supplemented by flowers, ornamental shrubs and trees, and benches or trail huts.

While we see the trail as being a multi-use one, this is not to say that all of the corridor lands would be all things to all linear recreational activities. For example, portions could be designated exclusively for snowmobilers in winter, with other portions allocated for cross-country skiing and snow-shoeing. In other places, with a wider corridor, the two might co-exist.

Moreover, when we speak of "multi-use" we do not mean that the trail would simultaneously be available for "resource development" uses, for above-ground utility uses or for nonrecreational transportation. The suggestion made to us that the land could be used to improve access for both silviculture and fire fighting on forested lands while, at the same time, serving a recreational usage is one we reject for its reduces the trail to be little more than the traditional "logging road" and defeats the primary aims and objectives we feel are inherent in developing the trail project to its full potential.

To say that the trail should be a multi-use (but solely within a recreational framework) is not to say that the trail project would lack uniformity. A suitable trail logo and a small but common signage program could serve as a means to unify the network. The rail line intersects numerous roads and private crossings and, where this occurs, the intersection would need to be marked. A simple barrier, perhaps consisting of several posts in the ground, would not only signify the user's need for caution on approaching an intersection point but would also discourage motorized vehicles from attempting to enter the trail corridor. With a uniform colour scheme, these posts could identify the trail corridor and serve to unify it, as well as marking trail usage and rules through symbols on the posts.

We were also impressed with the idea of a linear outdoor museum, a concept used in the Edmonton Heritage Trail. We are of the view that this idea could be readily and inexpensively adopted for local usage in the trail project. We have in mind a structure very much like the one used for municipal bus stops, with a wide wooden bench, above which there is a small, sloped and shingled "roof". A billboard, almost the same length as the bench, is partially protected from the elements and forms an incomplete division between the front and back of the bench. A series of trail bench huts of this nature, placed in municipal areas or other points of user concentration would serve to unify the trail network if they were of similar design and materials. Not only would they provide a resting and meeting place for trail users, but they could be used as information points, showing maps of local trail routes and user rules as well as local information on businesses whose services would enhance enjoyment of trail facilities.

In addition, these trail bench huts could be used as focal points for community heritage. The billboards could serve as a means of describing people or events that characterized the area. This could even be supplemented by various means, such as large, outdoor artifacts or attractive signage that illustrates and describes part of the local heritage.

A further unifying feature and one that promotes the heritage of each locality involves naming individual trail sections in honour of persons who have made a significant contribution to the community in the past or persons who were once local residents and who became prominent elsewhere. Naming trails makes it easier to identify the routes on maps and in oral descriptions. The use of personal names provides local communities with an opportunity to remember and commemorate their heroes and heroines - and perhaps, on occasion, their villains. It not only offers an opportunity to enhance community pride in the past achievements of the citizenry but also adds to the heritage theme of the trails project. As well, this tread of commonality in the network, perhaps augmented by a small signage of these names at points on the trails themselves, serves as an additional unifying aspect to the trail project.

We do not see the abandoned rail line as being the sole component of the trail project, although this corridor would be its central focus. Two other elements are, in our opinion, very essential parts to be considered in this project.

The first of these is surrounding land, particular land already in public ownership. Roads, parks and property now vested in the Land Development Corporation/Agricultural Development Corporation should be taken into account in the project. So too should privately-owned lands. Consideration of other lands would enable the trail to be more than a corridor in places there would be one or more loops for users.

Of these components, roads are of vital concern. The Province has some 3,800 km. of paved and 1,500 km. of unpaved roads. Sixteen of these roads, totalling some 50 - 60 km. have been designated as "scenic heritage roads". While these have been considered for that purpose primarily for motorized vehicles, rather than hiking or cycling, these scenic heritage roads along with many other infrequently used roads should be taken into account in developing some of the trail uses and its network wherever these roads are located near the abandoned rail line corridor.

In the development of the trail, the location and existing capacity of parks should be very much a part of the planning exercise. So should other public properties, particularly those lands "leaked" to the Department of Tourism and the lands "leaked" to the Department of Forestry, by the Land Development Corporation/Agricultural Development Corporation. Of special interest are the demonstration woodlots and their existing capacity for linear recreation where these properties are near the rail corridor.

Privately-owned lands must also be considered. There may be places where a convenient loop or a more visual vista can be obtained if a private owner is willing to cooperate by granting some form of access or by preserving or enhancing a particular view. On the other hand, there may be land uses such that a trail nearby would not be desirable or, at least, not so for a particular type of user or at a particular time of the year. A nearby asphalt plant or dump site might render the trail unattractive for hiking, for example, although the usage might not be a deterrent for snowmobiling.

Taking account of local resources and infrastructure is also important for another reason. While we see the trail system as, first and foremost, a linear recreational project for local needs, we feel it is important that the potential it offers as a visitor attraction cannot be overlooked. Indeed, the "visitor" component pertains not only in relation to off-Island tourists but also to residents of the Province who want to enjoy leisure time away from the locale in which they live or work. To ensure that the trail project best serves both these users and the communities encompassed by the rail corridor, local businesses, heritage sites and other attractions must be identified and, to the best extent possible, be tied into the network.

We see this a realistic and feasible effort, for the available literature and expertise in the fields of planning and tourism suggest that pedestrian traffic in an area is a stimulant to the local economy. People do not spend dollars in a community unless they get out of their automobiles (except, perhaps, in the purchase of gasoline). Measures that will encourage visitors to leave their automobiles in a local area and walk, ride a bicycle or a horse, don skis or take a snowmobile would represent a first step towards encouraging visitor spending in those areas. The spending might be little more than an ice cream or a cup of coffee but it could be much more. And the recreational facility of a trail offers communities the opportunity to host a wide range of competitive events that would draw in people, both to events involving the trail network and to activities tied to the trail only by local marketing.

A further reason for incorporating local resources and infrastructure into the trail project is that the proposal offers great potential for diversifying visitors from the golden triangle of Central Queens. It is by chance, a century after its construction, that the railway never traversed the area adjacent to the National Park. This is indeed fortunate because the trail project offers an opportunity to disperse tourism to Kings and Prince Counties. As we discuss in other sections of this report, the increased pressure from both tourism and agriculture for land use in the central portion of the Province is such that we recommend various measures to modify the current pattern. We are of the view that the trail network should be developed in the areas east of Charlottetown and west of Summerside before development is permitted in the central core as a means of ensuring suitable diversification.

Let us consider some examples of how the rail trail project might be developed using our ideas in this regard. While we have chosen portions of the Souris line and the Elmira spur east of Charlottetown to illustrate our themes, we must emphasize that similar opportunities can be readily developed in Prince County.

Our first example would involve that portion of the corridor between Harmony Junction and Elmira, a 9.85-mile stretch of railway known as the Elmira Spur. At the eastern tip, the Elmira Railway Museum provides a heritage focus already in place. Our illustration picks, randomly, Harmony Junction as a convenient western point. Here the rail line continues southward to Souris and westward to St. Peters. (The location is convenient for Souris users who may wish to augment that portion of the rail line nearest to them) Many of the rural residents of this Eastern Kings area live along Route 16 which follows the northern and southern coastlines around this easterly tip of the Province.

A glance at an Island map shows the Elmira spur is a corridor about half way between the northern and southern pincers of Route 16. More detailed examination of the map shows this stretch of rail corridor is intersected by five roads. As well, there is the unpaved Tarantum Road (Route 304) that runs parallel to and slightly south of the rail line. In the vicinity there are two Scenic Heritage roads. The New Harmony Road, a portion of Route 303, is a 1.2 km. link between the Tarantum Road (Route 304) and the Greenvale Road (Route 303). The second Scenic Heritage Road is the Glen Road, an unpaved stretch of Route 303 that parallels the rail line corridor to the north. Already there is considerable infrastructure in place for a trail project!

A brief "field trip" to this area in late October of 1989 showed portions of the rail line had been removed. Already nature was narrowing the corridor: the visible ribbon still remaining was only the width of the rail bed (perhaps six feet in all). The result looked excellent for hiking, horseback riding, snowmobiling or cross-country skiing possibilities. Cycling might be available too. But the growth suggested Mother Nature would not leave this corridor open for many years unless steps were taken to keep it open. The Tarantum Road was unpaved and wide but there was no development on it. The road passed through considerable woodland of mixed spruce and hardwood and some cultivated land. There did not appear to be any livestock farming in this interior. While there was some residential development along portions of the paved roads that intersected the rail line and the Tarantum Road, the short distances between the rail line and the Tarantum Road were undeveloped.

The rural setting was further evidenced by the lack of traffic - not a single vehicle was observed during an exploratory trip of Routes 301, 302, 303 and 304. But it may be significant to note that two individuals were seen, in separate locations, each enjoying an autumn stroll along one of the paved secondary roads during this single period of observation.

The possibilities for linear recreational use in this area depend in a large measure on local factors and conditions that cannot be determined by strangers casually observing the site at a single point in time. Do insects in spring or summer negate the opportunities for pleasurable hiking or biking? Is springtime mud a deterrent to the use of Route 304? Is there hunting in the autumn that could create hazards in the area for other recreational users? Do residents in this area lack interest in winter sports that might use the rail corridor? Would they object to visitors using snowmobiles? Or to strangers in their locale? Would vandalism be a problem if users left automobiles unattended at access points while using trails? Only the residents of Eastern Kings can put answers to questions such as these.

But let us assume, for the sake of our illustration, that local residents feel there are no insurmountable obstacles to the use of the area for linear recreation activities and that they would like to see a trail network for their own uses, as well as a visitor attraction to supplement not only Elmira but also the East Point lighthouse, the North Lake Harbour and its tuna fishing, Campbell's Cove Park, Basin Head museum complex and the Red Point campgrounds. In that case, the area focused around the Elmira spur is richly ladened with possibilities for linear recreational activities.

With the inclusion of the railway corridor, a short trail loop can begin in Elmira at the railway museum and follow the rail line to Route 301. This might be an excellent opportunity for a trail that is well developed for disabled users, youngsters on bicycles and families with strollers or carriages who want to combine a visit to the museum with an outdoor encounter with the wilderness. Users who want the benefit of a longer and more primitive challenge could follow the rail line all the way to Harmony Junction and return to Elmira via Route 304. Those who would find a trail of some 20 miles far too long for their purposes could have the option of shorter routes by going east on the rail line as far as either Route 302 or Route 303, in any case returning to Elmira by Route 304. More intricate routes can be fashioned by incorporating the New Harmony Road and the Greenvale Road - the two Scenic Heritage Roads - and the New Harmony demonstration woodlot into the design. The paths that now honeycomb other woodlots in the area suggest that consideration of other public lands could further multiply the possibilities.

This is not to say that such a network is possible for any and all uses. Incorporating roads into the trail network involves careful consideration of other uses and safety factors. Perhaps portions of the entire trail could be used only for special events. Skiing, for instance, might be permitted only on the rail corridor so far as casual individual users are concerned but a special competition could include use of the more extensive network with precautionary arrangements being undertaken by organizers to protect both the recreational competitors and the general public motoring in the area on that occasion. Within parameters such as these, we feel the Elmira spur could be the backbone of an extensive outdoor recreational facility.

Our second example illustrates the possibilities that use of the railway corridor may afford a municipal area. For this discussion, we shall focus our spotlight on the community of St. Peters, where recent publicity generated by the Land Use Commission hearing on the Cable Head/Greenwich area gave the impression the locale would welcome more tourism and economic development.

The "1989 Visitors Guide: Your Complete Vacation Package", published by the Department of Tourism would imply by its omissions, that St. Peters has little to offer. There are no "attractions", no "product tours", no "activities", no "crafts or arts" and no "theatres" bearing a St. Peters address. The Visitors Guide does not totally ignore this community, for there is mention of "picnic and camping facilities on a wooded hillside overlooking St. Peters Bay" and there are two sentences devoted to its local heritage. Elsewhere there is a detailed description of the facilities at St. Peter's Park and the accommodations offered by five tourist operators who provide lodgings in cottages and in bed and breakfast operations.

The community has far more to offer than the pages of the 1989 "Visitors Guide" would suggest. First there is a spectacular view, scenery second to none. While other areas may tie for first place in the landscape department, St. Peters can hold its own, quite proudly, with the sweeping vista of hills on both side of the Bay. The community also has a rich heritage, dating back for centuries. It has local businesses, a tidy race track, historic churches, beautiful homes, public buildings and community centres - not to mention the local park, a mussel industry and nearby sand dunes of considerable renown.

The Number 2 Highway runs right through the centre of St. Peters. This fact is both an asset and a liability. The highway offers accessible exposure to the magnificent scenery. The landscape is readily available without any detour from the main thoroughfare. The highway serves as the main street for the community. As a result, traffic through the core of St. Peters is relatively "heavy", enhanced no doubt by many of the more than 50,000 passengers who bring in excess of 21,000 vehicles onto the Souris-Magadalen Islands ferry.

But the highway is also a liability for St. Peters. It brings people into the community and, just as easily, it takes them out again. There is little in the core of the village to entice drivers to become pedestrians, for there is no designated area to pull out of the regular traffic stream simply to enjoy the view. Sidewalks are not in evidence. St. Peters needs to create a reason why strangers should stop there, why it should be a destination point on their journey, if only for an hour or two or an afternoon. And, we believe St. Peters has just such an asset: its rail line.

One reason why St. Peters is an excellent choice for our sampling of ideas is the precise locale of the rail property in relation to the community. The Souris rail line runs north of Route 2 in the Eastern Kings area; it intersects the main highway and begins to run south of the main highway only at Five Houses just east of St. Peters. As the rail line moves westwardly it follows the upper contours of the Bay - to the east of the highway bridge that bisects the village itself. Route 2, the railway and the bridge meet in the very heart of St. Peters, adjacent to the area's Senior Citizens Club. From there, the railway is closely sandwiched between the road and the water, hugging the Bay along the main street. When the road parts company with the shoreline and wanders further inland, the rail line stays with the shoreline until it meets the Midgell River.

This is excellent infrastructure for linear recreation, with added benefits. The rail line corridor provides numerous opportunities for vistas - adding photographers to the list of potential users - and can serve as a transportation link for local school children and campers at the park, which is immediately adjacent to the rail corridor.

While the back roads in and around St. Peters do not offer the same possibilities for numerous connecting trails as the Elmira spur, there are easy loops that are possible to make. To the east of the Senior Citizens Club, portions of Route 312 could combine with the rail line corridor for a triangular trail. Further to the west, south of Route 2, St. Peters has a lovely road (the Anderson Road), largely unpaved and sufficiently obscure it bears no route number on official maps. While the Anderson Road begins south of Route 2, there is an existing access linking the rail line with the Number 2 Highway. The Anderson Road climbs upwards to the peak of the southern hillside, providing a panoramic view of the Bay more spectacular than the vista the main highway offers. Then users are faced with a choice. The longer loop continues southward before veering to the east. Eventually it meets Route 313, where there is spectacular "interior scenery" - a vista that does not include any water view but provides a sweeping range of rolling hillsides. Route 313, a paved secondary road, eventually wanders past the racetrack and school, again providing further spectacular viewpoints of the Bay setting. The shorter loop swings through a series of wooded lanes, bordering fields of grain and potatoes before it ends as it intersects Route 2 in the heart of the community itself, not far from the United Church. While the Elmira spur has great potential for recreational users who welcome the loneliness of a relatively isolated, wilderness environment, without panoramic vistas, St. Peters provides an opportunity to combine landscape, heritage and leisure activities in a built environment, surrounded by open spaces.

To see how such a plan might unfold, we considered the rail line corridor in the area, beginning at its intersection of Route 2 at the southern side of the bridge. On either side, the location of the railway is an ideal one for disabled users with convenient parking areas nearby and ready, paved access immediately adjacent to the rail line. A paved ribbon along the shoreline could accommodate their needs to ensure maximum enjoyment of the trail. The paved area could span the entire length of the corridor from Five Houses to the Midgell River or it could be of a more modest length. Use of a suitable ground cover that requires minimal maintenance would provide landscaping or the area between water and highway could be further groomed with shrubs or flowers. On the eastern side of the bridge, a trail hut would serve as a focus for local heritage information, perhaps augmented by some outdoor artifacts. For more ambitious users, alternative trail loops incorporating local roads would be available - and identified on suitable diagrams or maps of the area. Additional printed information, distributed through local business outlets and elsewhere, could provide more detailed information so that anyone strolling the rail corridor along the Bay's perimeter would be able to identify the sites of the old court house, former schools, the home of a renowned medical doctor, the various churches, the mussel leases, the sand dunes and so forth.

We feel there are numerous opportunities to generate community economic development from such facilities, if that is what residents of the area hope to derive from their trail project. Increased visitors who stop in the community spell increased activity for existing businesses. Rentals of suitable sports equipment and services centered around the recreational uses are other possibilities. Planned community events can offer more enhanced programs, inviting visitors to combine a stroll on the trail with attendance at community fund-raising events. The possibilities are endless, requiring primarily imagination and initiative to put the trail project to work for the community.

What, then, are the arguments in opposition to a rail trail? We would like to reiterate the catalogue of concerns and our response to them.

Safety and policing have been cited as an essential factor. While these considerations must be taken into account as part of a careful planning exercise, we cannot see safety and policing concerns as being sufficient reasons to deter such an undertaking. We suggest the trail project would be policed by the same personnel and in the same fashion as the Province now polices its 5,350 km. of roads, many of which are remote and isolated from police headquarters, and its hundreds of miles of coastline, much of which is far less accessible to vehicular or pedestrian traffic than the rail corridors. Our police forces are trained and capable of handling airline disasters in dense bush far removed from any roads or residences. They can and do find illegal stills back in the woods. In the event of a trail accident or a behaviourial problem, the trail line would be fairly accessible: road intersections are rarely more than a mile from the mid-point of the rail corridor. We do not foresee a need for regular patrols of trails: our shorelines and most of our roadways are not regularly patrolled to enforce law and order among users.

Our position on this issue was enhanced, as we finalized our Report, by the findings reported in the recent issue of *National Geographic. In "Greenways: Paths to the Future", author Noel Grove referred to this issue at pp. 92-3:*

> In Iowa, Tom Neenan felt the heat of opposition when he helped convert an old electric rail line to a hike-and-bike path from Cedar Rapids to Waterloo. "Adjacent landowners said it would attract vandals who would damage their land, shoot their livestock, rape their daughters," said the white-haired former homebuilder, amazement still on his face in the telling.
>
> "The landowners burned a railroad trestle, defoliated trees, and buried boards in the trail with nails sticking up. In fact, *the only violence so far has been done by the people who said they were worried about the trail attracting a rough crowd.*"
>
> The land was finally purchased through private donations and developed largely by volunteers.

> My foray on the proposed 200-mile rail-to-trail conversion west of St. Louis - the "KATY trail," for the Missouri-Kansas-Texas Railroad - ended at a fence built by an angry landowner.
>
> "We know 99 percent of the people using it will be good people," said another trail opponent, John Sam Williamson, who farms near Columbia, Missouri. "But one percent may be bad. On the trail in Columbia a woman was murdered, and they've had some robberies too. Our objection is the way they took the land, but we have some personal concerns as well."
>
> *Studies indicate that trails are no less secure than other areas of human use and cause no increase in crime.* Seattle law officers pointed out that *problems in park areas are ususally related to easy automobile access,* which is not available on that city's Burke-Gilman Trail. *A long-term study of the Appalachian Trail, which passes through both rural areas and small towns, revealed impressively low crime statistics considering the volume of people who use the facility.*
>
> "If a corridor runs through a city, you've got to remember you're still in a city," I was told by city planner Bob Mosher in path-conscious Raleigh, North Carolina.
>
> *"Our statistics indicate you're probably safer on a greenway than in most areas.* People with a criminal mind-set don't usually frequent places like that." [Emphasis added.]

While safety measures are naturally of concern to us, particularly where the rail line meets roadways and private crossings, the risks to highway users are far reduced from the dangers presented by trains themselves. Insofar as the recreational users of the trails are concerned, we submit that the risks are far less than what hikers and cyclists now encounter from using arterial highways. It may be that safety factors necessitate restricted use of portions of the trail, but we cannot see how safety concerns are sufficient reason to negate the validity of the trail project.

It has also been suggested to us that safety hazards are of particular concern to livestock owners. We expect that for most users, fear of livestock far exceeds the risk to animals. In addition, the livestock are ensured of far greater safety from recreational use of the corridor than from railway use. The animal that encounters a train is apt to be the loser; the one that meets a pedestrian or a cyclist is more likely to emerge relatively unscathed. This is not to deny that there can be problems, particularly those presented by inconsiderate users but those types of problems may equally arise wherever there are roadways adjacent to fields that contain livestock.

An additional concern in relation to livestock is the need to fence properties. Because of the danger that trains posed to livestock, railways traditionally were required to fence rail corridors to offer as much secured protection to the animals as possible. Many of these fences have been long abandoned by the rail line for livestock numbers have declined just as the railway itself decreased usage. Much of the existing corridor does not abut farm land. Where there are fields adjacent to the rail property, there is always the possibility of trespass onto farmland. This presents a potential problem for crops, although we have some faith that most users will respect private property if trail rules ask them to do so. Proper maintenance of the trail corridor should provide sufficient natural vegetation to ensure either some indication of boundary lines for a trail or to provide natural buffers or both. Those who would intentionally trespass will not be deterred by fencing. Consequently, we do not feel that the trail corridor would require fencing on both sides for its entire length, as was suggested at our hearings; indeed, it would appear that much of the corridor would not need fencing at all.

Fencing would, however, be a necessity where livestock are pastured adjacent to the rail corridor. Under the existing provisions of the provincial *Fences and Detention of Stray Livestock Act*, fencing and its maintenance is largely the responsibility of the livestock owner. Where the adjoining land is not used to keep livestock, the cost of all materials for building and maintaining a fence shall be borne equally by the livestock owner and the owner of the adjoining land, but the cost of all labour is incurred only by the livestock owner. Whether or not these provisions are applicable to the Crown, when it is the owner of the adjacent land, can be argued. We would suggest the legislation should be clarified in this regard, for Crown responsibility would render taxpayers liable to share the material costs of fencing livestock wherever pastures adjoin public roads!

The problem relating to the need to fence livestock along the rail line can be addressed by a variety of solutions. We prefer an approach that does not depend on a single solution. Rather, we propose a priority emphasis on local needs and wishes. If local residents do not want linear recreation in their area, it should not be forced upon them by outsiders. If that is so, it may well be that farmers in the local area could be given short-term leases that would enable them to fence across the corridor - at least until such time as local residents in a community do want use of the corridor. On the other hand, a small minority should not be able to veto the preferences of a majority.

There may, on occasion be room for some compromise positions. For example, where there is a livestock owner on one side of the rail corridor and the land on the other side abutting the corridor, the owner has to fence anyway along the stretch and the few extra feet that would be tacked onto the end of his field is immaterial in terms of pasture acreage. In such circumstances, the legal obligations to fence along the rail corridor should not be any different from the normal obligation where there is a public road adjacent to a livestock farm. Even when there are livestock pastured on both sides of the corridor with two livestock owners, each faces a fencing requirement not unlike the situation where each abuts a public road. But where the same owner uses pasture on both sides of the corridor and must have access to the rail line corridor to move the animals, we feel the matter must be dealt with using some practical sense. One solution might be to allow gates across the corridor (or stiles for hikers) if there can be agreement reached on recreational user access. Some livestock owners may have no use for their pasture in winter months, so that trail could be restricted to recreation usage during certain times of the year. Or an alternative routing might be arranged so that a livestock owner could lease a key portion of the rail line in return for providing a footpath elsewhere. If no compromises are possible, the alternative is a corridor fenced on both sides. In other words, provision for public linear recreation should be given the priority, if a priority must be asserted between conflicting wishes.

Other concerns have been expressed in regard to the rail line corridor; fire was one of these. We do not wish to minimize the risk of fire caused by careless users. But, as we discuss in relation to trees in this Province, we feel there is a fire hazard created of far greater magnitude by the existing state of woodlots in the Province. As with safety and policing, fire is a danger but users can be warned to follow rules in this regard. And fire is equally a danger regardless of who owns the rail line or for what it is used. Indeed, the potential for danger, whether from fires, chemical spills or train wrecks were likely far greater when the rail line was used for transportation purposes than it would be if it is used for public recreation.

Litter and vandalism were also concerns mentioned in opposition to the rail line. We asked a spokesman for the Bruce Trail project about these concerns. He recalled only two incidents of suspected vandalism - both involving fires - that could have developed into serious situations, although this trail of over 400 miles has been in use now for almost a quarter of a century. Littering was a problem on the Bruce Trail only in certain areas, usually at or near access points. Research showed that where litter was a problem it had been a problem before the trail developed and, when the trail was re-routed, litter continued to be a problem at the former site. He theorized that litter was a localized issue - a problem derived from people who frequented the area, not trail users from elsewhere. The most frequent "difficulty" encountered from trail use was one of injuries arising from the type of recreation it offered. Sprained ankles, for example, were experienced on occasion but this was to be expected from a long-distance wilderness hiking trail that, in places, traverses rugged terrain. A lesser problem, but one of growing proportions as trail use increased, was that of cars parked in inappropriate locations. A plan to formally designate official access points was underway to overcome this.

The Canadian National Railways has not been an exemplary property manager, particularly in recent years. As rail traffic diminished, rail lines have become cluttered with weeds, rusting metals of various shapes and sizes, discarded railway ties, derelict buildings and ditches full of stagnant water. While litter and vandalism are concerns for any property owner, if these fears were allowed to prevent public development opportunities, we would never have schools, roads or other structures. Hopefully, community pride will minimize these problems and a further area for recreation may direct youthful energies in healthier and more productive pursuits. Islanders have waged war on litter along public roads and beaches; we expect they will do so on a public linear recreational facility. If we are wrong in this, we submit that a rail line under new ownership and recreational usage would, at worst, bear no more scars than the property does as it now exists.

While these negative reasons have been put forward in opposition to the trail project, such arguments have been used essentially to support the contention as to why private ownership of the rail lands would be preferred by adjacent land owners. The concerns, it would appear, are not held deeply enough to oppose a rail trail in principle but only to oppose it in specific locales. This "not-in-my-backyard" approach should not be allowed to stand in the way of this development. We do not accept many of these fears as being sufficient to deny the Province the possibility of being a leader in Canada in a venture of this type.

What role, then, should the Province assume in the trails project and how should it be managed? To address these questions we have drawn on several existing resources and models, as well as some ideas from elsewhere.

First of all, we assume that in the event the land is available to the Province, it would be available by way of gift or, at most, the cost would be a nominal one. We understand that the total area of land involved amounts to approximately 3,000 acres with Executive Council already approving the purchase of more than 600 acres at a cost of $100/acre. Based on this information, the land base in its entirety would cost the province, in all, around $300,000. This would provide the project with an enormous advantage, as compared with many of the American projects where land costs have been high whenever public interests have needed to compete with private developers in the marketplace, (particularly in areas where land prices are measured in dollars per foot.)

Secondly, we submit that the title and both the initial planning and the general management of the rail corridor and any other abandoned rail property should be vested in the Agricultural Development Corporation. In reaching this conclusion, we have considered numerous other possibilities and rejected each of these for various reasons.

While several of the line departments of government may have some component that could tie in with the trails project, we are of the opinion it is necessary to reject direct involvement from the line departments in order to maximize input from the general public and to ensure that the project serves the goals for which it was intended. The Department of Transportation and Public Works, for example, has expertise in land use planning and management for linear parcels of land (i.e. roads). But, to nominate this department as the one with management responsibilities for the trail project implies that the government would be solely responsible for the project, just as it assumes total control over roads and public buildings. Moreover, we question whether this department is able to see the project in the proper sphere, since its mandate is to promote efficient transportation whereas a slow-paced, pedestrian-based orientation is needed. The Department of Finance has responsibility for property mapping and its resources include computerized capacity to provide vital information on property throughout the Province. But the department has no expertise in land management or land use and its designation would be suggestive of a financial commitment by government above and beyond what we would envision. We have considered, as well, the Department of Tourism and Parks, the Department of Industry, the Department of Community and Cultural Affairs and the Department of the Environment - all for various reasons - and, for equally diverse reasons, all were found wanting. According to the 1987/88 Annual Report for the Department of Tourism and Parks, "the major objective of the Department is to plan, promote and develop the tourism industry in Prince Edward Island". While the trail project can and will be a valuable and integral part of the tourism industry, we do not wish to see the trail project move forward as primarily a tourist attraction. Likewise, we submit there will be economic development benefits arising from the trails project, but that is insufficient reason to place the general management of the trails project within the Department of Industry. While the trails project is going to be dependent on community support and local involvement, and while the Department of Community and Cultural Affairs has expertise in land use planning, the Department has not been involved in land management. Furthermore, its mandate is one suggesting a municipal emphasis, whereas we find a rural priority is required in this project, even though it has urban elements. The new Department of the Environment has no land management involvement. It would appear that all of these Departments have "something" to offer the project. But none of them, individually, fit the need, and, inter-departmental cooperation has always been a difficult goal to achieve.

Ideally, the solution would be for the creation of a new Crown corporation: a Rails-to-Trails agency. But, this is impractical and financially irresponsible if the project can rest with some other agency. There are several possibilities from which to choose: the Land Use Commission, the P.E.I. Development Agency, the Museum and Heritage Foundation and the Land Development Corporation/Agricultural Development Corporation. Of these, we initially selected the Land Development Corporation, for its goals and objectives and its existing resources came closest to what is required. When the L.D.C. was replaced by the Agricultural Development Corporation, we saw no reason to alter our position.

We rejected each of the other Crown agencies, again for diverse reasons. The Land Use Commission is essentially an appeal tribunal and, if our recommendations are accepted, its functions would be even more confined to its appellate role. The P.E.I. Development Agency is designed to promote commercial ventures, not recreational ones, and it has no expertise in land use planning. The Museum and Heritage Foundation would have much to offer the project in promoting the historical dimensions that we regard as an importment supplement to the project but, like many other departments and agencies, its involvement and expertise in land management is not a direct part of its mandate.

Under the *Land Development Corporation Act,* the L.D.C. had a mandate "to preserve, develop and hold lands having desirable qualities for urban, industrial, recreational, forestry and wildlife capabilities" and "to preserve, develop and hold green belt land in and around urban areas, streams, ponds and fragile habitats." The L.D.C. was involved in land management and land use and its resources included both a complete collection of aerial photographs for the entire Province and a vast collection of documentary information on lands surrounding the rail corridor. The agency had some two decades of experience in dealing with the agricultural community, so it was better equipped to mediate fairly between farmers and trail enthusiasts than any other agency. It was the titled land owner of many thousands of acres of land, some of which could be utilized to ensure a better developed trail network in some areas. In addition, the Land Development Corporation was well placed to draw upon line departments for cooperation without necessarily engendering the interdepartmental rivalries and the priority competitveness that could arise if the project were under the umbrella of one of the traditional departments.

When the Land Development Corporation was transformed into the Agricultural Development Corporation in early 1990, these advantages were retained. In addition, the *Agricultural Development Corporation Act* expanded the original mandate of the L.D.C. The new Agricultural Development Corporation was given objects and powers that included the promotion of rural development. The A.D.C. has the power to "convey or lease any land to, or enter into a trust agreement with, any non-profit organization in regard to land having recreational, wildlife or fragile habitat capabilities" [Section 8(i)] and to "preserve, develop and hold lands for the purpose of attaining the objects set out in this Act" [Section 8(r)]. These objects include acquiring, developing or improving land for "tourism" and preserving, developing and holding lands "in the best interests of rural communities" [Section 7(f) and (f)(iv)]. Therefore, the Agricultural Development Corporation is even better positioned than the Land Development Corporation to assume title to and management of the lands from the abandoned rail line.

Accordingly, we recommend

- **THAT title to the rail lands be vested in the Agricultural Development Corporation and that this agency have the responsibility for management of these lands.**

Vesting ownership and land management responsibility in the Agricultural Development Corporation does not mean however that the A.D.C. should serve as the ultimate vehicle for delivering the trails project to the public. To accomplish that we suggest the need for many partnerships involving the Corporation and the private sector, including municipalities, community and service organizations, citizens groups and interested individuals.

As an analogy, we consider the Province's role in community schools to be an apt parallel. The Province provides school facilities throughout the Island and the P.E.I. Association of Community Schools receives a grant each year from the Department of Community and Cultural Affairs to operate a winter program of community-focused adult education. The Prince Edward Island Program and Expenditure Review Commission, in its 1987 Report to the Minister of Finance, found this expenditure of $46,200 was "an excellent example of what can be accomplished by individuals working themselves within their communities throughout the Province, rather than expecting government to fund their activities". Community schools operate successfully because there are a vast network of informal partnerships between various community groups, interested citizens and government officials, who are willing to provide their expertise for this program.

Since our public hearings were held, a Rails to Trails organization has been formed to urge the adoption of a trail program. It is unclear to us whether this agency intends to be simply a lobby group to promote this concept or whether it is prepared to undertake an active participatory role in trail development and management if its lobby efforts succeed. Such activism was promised, however, by the P.E.I. Snowmobilers Inc. in its presentation to the Royal Commission and we feel it will be forthcoming from a number of other volunteer sources as well if government is prepared to provide a cooperative initiative.

At the outset, we feel there is a critical need for government leadership in this project to ensure there is fair and suitable land use planning, a certain uniformity and commonality to the over-all project and minimal standards and rules for all users and project participants. To fulfil that role, we see the Agricultural Development Corporation as working with interested local groups to arrive at an appropriate overall and long-term framework for the project. In order to do so, the Agricultural Development Corporation should be staffed by a trails' coordinator/planner on a short-term, contract basis until the overall planning is complete and the A.D.C. is in a position to enter into a leasing agreements for a trails network.

During this initial phase, we see the need for considerable planning and leadership. But we also see a number of roles for the private sector.

Schools, senior citizens groups and persons with an interest in Island history could contribute in naming trails, in researching and preparing materials on local history suitable for maps and guidebooks.

Both government and private sector organizations can contribute to trail maintenance through various endeavours. On the government side, we note that, according to the 1988 annual report for the Department of Justice, "during the year the Provincial Correctional Centre initiated several community service projects aimed at assisting non-profit community groups. Activities included inmates making repairs to the Oyster Bed Bridge and Gencheff Children's Camps, Fairhaven Girl Guide Camp and several church renovation projects in addition to a program involving inmates of the Provincial Correctional Centre assisting in programs for seniors in two Charlottetown area facilities." In addition, the report stated that "community service/work was frequently ordered by judges of Provincial and Youth Court as a condition of probation orders" and that the Department would be directing its attention to "continued work on the development of alternatives to imprisoning individuals for non-payment of fines."

We note, as well, that in 1987-88, the Department of Health and Social Services "provided JCP [job creation program] services to approximately 400 placements. Jobs were secured within provincial government and non-profit community organizations. Major projects included the Aquaculture Project jointly implemented with the Department of Fisheries, the night watchmen for the wharfs, community centres, rinks and other agencies. The total budget was $1.5 million." This would be approximately $3,750 per job. The 1987 report of the Program and Expenditure Review Commission found that "the job creation program is costing $2,428 per job."

Clearly there are resources within government that could be tapped to assist the private sector in both the initial and ongoing maintenance of the rail corridor lands.

Another resource that can and should be tapped lies in the tourist sector. While we would expect both individual tourist operators and their various organizations would be anxious to participate in a venture from which they stand to derive considerable benefit, we are also very intrigued by the Colorado experience in building a trail of nearly 500 miles through rugged terrain with volunteer labour. Our research has shown that adventure holidays are very much "in vogue". Part of this trend lies in recreational activities undertaken solely for the risk and enjoyment involved; white water rafting and expeditions to the ice floes to see seal pups are two current examples. But there is another branch of "adventure holidays" where participants vacation by joining a work crew in some experience quite novel and remote from their usual line of employment. Scientific institutes and naturalist groups are making use of this interest: for a suitable fee, a visitor can, for instance, join a research project to count turtle eggs in some remote wilderness every night for a week. In developing and maintaining a trail network, we feel there may well be possibilities to market "adventure holidays" if the idea were suitably expanded.

We would anticipate that the trail corridor - or as much of it as local areas and groups have an interest in using - would be leased by the A.D.C. once the initial planning and coordinating efforts have been completed. The leasing arrangements might be made with a single organization, which would, in turn, make arrangements with local organizations to perform certain functions. Alternatively, there could be numerous leases, each one for a portion of the corridor and involving one or more organizations or individuals but with sufficient terms and conditions to ensure public access to the lands for certain purposes and common standards and rules throughout the trail network.

In conclusion, we are of the view that, providing there is considerable integration of existing resources, a willingness to bring about the project and a commitment on the part of both public and private sectors, we see the rail line trail project as offering enormous potential for Island residents - both in terms of local recreation and tourism - for the next decade and, indeed, for the twenty-first century.

Accordingly, we recommend

- **THAT the lands belonging to the rail corridor be used for linear recreational purposes;**
- **THAT the trail project be planned and coordinated through the Agricultural Development Corporation;**
- **THAT the Agricultural Development Corporation be given sufficient resources to hire staff on a short-term basis during the planning stages of this project to plan and coordinate the project;**
- **THAT the trail coordinator/planner work with local community organizations, municipalities and individuals to initiate participation and cooperation with such a project and to take an active role in planning the project;**
- **THAT the trail project be developed with a heavy emphasis on volunteerism as an essential component for its development and maintenance;**
- **THAT the trail coordinator/planner, with the assistance of the private sector, develop suitable standards for the trail, rules for user and participating groups, and common themes to unify the project throughout the Province;**
- **THAT the project have the support of government expertise and resources to augment the private sector in this endeavour;**
- **THAT in the development of the rail line corridor for linear recreation, priority be given as much as possible, to areas that lie to the east of Charlottetown and to the west of Summerside;**
- **THAT the rail line corridor be leased to private sector organizations for public recreation under specific terms and conditions once the planning phase has been completed.**
- **THAT once leasing has been completed, A.D.C. continue to retain a general managerial and supervisory role to ensure leasing conditions are fulfilled and, if necessary, to find new sponsors for the trail corridor or portions of it.**

Chapter 20

TREES

Virtually half the land in Prince Edward Island is used for growing trees, so it is most appropriate for us to single out this aspect of land use for commentary. What may be unusual is our choice of terminology: we have opted, purposefully, to focus on "trees" rather than on "forests", for we wish to underline the importance of trees, individually, as well as collectively, as an essential component in land use and landscape issues. All too often, *trees are viewed from the public sector perspective solely as forests. The commercial factors associated with dead trees are given a predominant thrust while less quantifiable considerations that are of equal or greater public value are lost or, at least, devalued.* Governments so often speak of the forest industry and its contribution to the economy. But this financial picture is painted almost exclusively in terms of the revenues derived from trees once they have been killed intentionally as a raw product for processing. Efforts to encourage living trees are expenses, a necessary but unfortunate detraction from the profits accruing to those who would otherwise gain more commercially from trees. From our perspective, *we think it necessary to look beyond the forestry-industrial aspect*, although this is certainly one component of the matter.

The forestry dimension was very much accentuated in the historical framework of the Province. Just as the Land Question was a central issue in nineteenth century political life, it was the forest that drove the economic engine of the Island in colonial times. Numerous historical references document the quality and quantity of Island trees in bygone eras. Jacques Cartier wrote the French king about the many "wonderfully fair" Island trees of many species and Thomas Pichon, the French traveller and secretary to the Governor of Louisbourg, "spoke in glowing terms of the beautiful wooded areas throughout the Island." More than two centuries ago one observer in the Georgetown area wrote of "destroying the finest groves of white pine that America could boast of", while John Stewart's *Account of Prince Edward Island in the Gulf of St. Lawrence, North America,* written in 1806, stated:

> Having gone through the catalogue of forest trees, I think it proper to observe that the timber of the Island is allowed to be much better than the like species of the neighbouring parts of the Continent, being of a finer and closer grain and texture not so subject to shakes and defects; the pines, black birch, beech and maple are also larger than they are generally found on the adjacent part of the Continent.

The comprehensive geographical history, *Three Centuries and the Island,* written by Andrew Hill Clark, Professor of Geography at the University of Wisconsin, almost four decades ago, noted that "[b]efore fire and axe changed the forest, the Island must have been a selectively representative botanical garden for a large area of the northeastern part of the Continent." This "botanical garden" was known as an Acadian Forest, for Prince Edward Island was categorized as belonging to the Acadian Forest Region, one of Canada's eleven forest regions under the classification scheme adopted in 1937 in W.E.D. Halliday's *A Forest Classification for Canada.*

The Acadian forest was removed as land was cleared for agriculture. Fires, many of them serious burns over large tracts of land, brought more destruction to trees. A third contributor to the loss of both quantity and quality trees - particularly quality - was a forest industry grounded in shipbuilding. J. F. Gaudet, whose 1979 text *Forestry: Past and Present on Prince Edward Island* documents the historical evolution of trees throughout the Province, chronicled the rise and fall of shipbuilding and, with it, the demise of the Acadian forest. At pp. 36, 38 he wrote:

> No shipbuilding records exist prior to the year 1830, although accounts of ships being built and utilized have often been referred to.
>
> It is known that between the years 1830 and 1864 there were 2,362 vessels built in the province with a total tonnage of 405,750 or an average of 70 vessels with about 12,000 total tonnage per year.
>
> After the year 1866, the number of ships constructed in the province started to decline as shown by the following records:

Year	**No. of Ships**	**Tonnage**
1866	127	31,932
1870	53	14,312
1872	60	15,060
1875	83	19,838
1876	62	14,571
1878	39	10,502
1880	21	10,502
1890	12	2,008
1900	3	56
1905	6	577
1906	Not one vessel was constructed	

> *It can be truly said that for many decades this province lived by shipbuilding for markets in Britain and other British colonies. By the earnings overseas of the sixties and seventies a minor economic miracle took place and the Island became a considerable producer of ships for sale in the international market; in terms of number, it probably contributed more ships to the merchant fleet of metropolitan Britain than any other place beyond Britain's shores.*
>
> Two factors contributed to the decline in the shipbuilding industry in the province at the turn of the century. First, the iron-hulled ships and the steam-powered paddle wheel came into existence. No longer would hulls be stove in by floating debris; no longer would ships have to rely on wind for power. The second reason was the decline of the forests of the province due to settlement, fire, and extensive harvesting.
>
> Lloyds of London, in a survey of ship construction, show the gradual changes in the woods used as the timber resources of the Island became exhausted. In the 1850's the James Yeo was built of birch, juniper (larch), cedar, oak and yellow pine. The Sara Jane of the same period had birch, beech, ash and maple in her framing and white pine in her planking but she too was predominantly made of cedar; some ships were built almost entirely of this timber. Eighteen years later the Bridegroom, like nearly all her successors, was constructed almost entirely of spruce.

> *The shipbuilding industry took the best of all species. The straightest, tallest and best quality trees fell to the lumberman's axe for shipping in a variety of forms,* including timber, deals, boards, planks. shingles, scantling, lathwood and spars. Most of these products went to Britain to supply a market cut off from importing lumber from the Balkan countries. The best beech, ash, oak, maple, birch, pine, red spruce, larch and cedar were taken, sometimes to the extent of almost completely ridding the province of these species. *The crooked, knotty, limby trees could not be utilized so they provided the seed source for the next generation of trees. The Acadian Forest ceased to exist in the province.* [Emphasis added]

As early as the 1820's warnings were being issued to prospective settlers to ensure that they realized the necessity of reserving a portion of their lands in forests for fuel production. The rapid decline of the forests throughout the 1800's culminated, at the start of the new century, in the passage of *An Act Respecting a Forestry Commission* which established a three-man commission to prepare a report on the state of the Island's forest. Its report was submitted on March 31st, 1904. After exploring timber demand, timber production and forest management techniques in Europe and other parts of Canada the Commissioners concluded that "a timber famine is in sight". Their recommendations included: reforestation, proper selection cutting of trees, planting of shelterbelt, developing and popularizing Arbor Day, creating experimental tree plots attached to each school, requiring all teachers to receive instruction on forest management, incorporating forest management instructions into elementary schools and the creation of a forest nursery at the government farm. Thirty-five years after the tabling of this report, the first known tree nursery was established at the Prince Edward Island National Park in Dalvay in 1939. One year prior to that the then Deputy Minister of Agriculture, Mr. Walter R. Shaw, sent 28 young men on an eight week forestry course at the Acadia Forest Experimental Station in New Brunswick. This was followed by a National Forestry Program for Prince Edward Island which used graduates from the 1938 course to lead six-man crews in establishing forest improvement cuts in highly visible demonstration locations on travelled roads. This program was curtailed by war in 1941.

The National Forestry Program experiment in forestry management unfortunately had adverse consequences. While the project utilized the available knowledge of proper techniques, unforeseen developments did occur that damaged the credibility of the goals of woodlot management. The story, as related by J. F. Gaudet, unfolds in *Forestry Past and Present on Prince Edward Island* at pp. 54, 56 and 58:

> Two-acre plots were selected in timber stands along the roadside and the owners' agreements were drawn up and signed. The plots were then worked on by the young men enrolled [*sic*] under the National Forestry Program. All dead, deformed, diseased and otherwise defective trees were removed and the remaining healthy trees thinned so that each tree that was left was given sufficient space for optimum growth. The wood removed was cut into pit-props, sawlogs, pulpwood, shingle wood, and fuelwood. All the felled timber was cleaned up and piled separately by products, while the slash was scattered over the ground so that it would decompose rapidly. The owner was instructed to remove the wood from the plot as soon as possible and dispose of it as he wished. The plots were laid out square or rectangular and marked by four corner posts. Signs, indicating the nature of the plot, were set up on a few areas and were to be completed for all plots as soon as it was convenient to do so.

……

> Because the people in charge did not understand climatic and growing conditions in the province, many unconscious mistakes were made.
>
> For instance, in this initial trial of woodlot improvement little thought was given to the following: (1)location of the plot; (2) the condition and species of trees in the plot; (3) the inherent quality of the trees themselves.
>
> Plot location is very important.
>
> Because of the excessive winds here, averaging almost 24 kilometres (15 miles) per hour for three hundred and sixty-five days of the year, and because all coniferous trees in the province are shallow rooted, when mature and semi-mature stands of trees are thinned they must have a protective barrier around them or they will blow down. This did happen in many cases in the mature and semi-mature plots that were thinned under the program; in fact, *in some plots three years after the work was completed not a single tree was left standing. As a result, forestry got a very poor reputation.*
>
> In the younger stands, even though no blowdown occurred, *very little increase in growth resulted. Because the trees were inherently degraded, no amount of thinning or even fertilizing could change the inborn characteristics of the trees themselves.* A very good example of this is a young white spruce stand that had been thinned in the centre of the province in 1940. Today, almost forty years afterwards, even though some trees are 30 cm. (13 in.) in diameter, they are only about nine to twelve meters (30-40 ft.) high. If the trees in this particular stand were genetically good, their height should now be 20 to 25 meters (65-80 ft.).
>
> *From the first attempt at woodlot management during the early part of World War II and until 1950, forestry and all that it stood for was a completely forgotten art.* In fact, many people who viewed the results of the work carried out in woodlot management in the late thirties brushed forestry aside as being of little significant value in this province. "Why try to manage woodlots to improve growing conditions if all the trees are going to be blown over eventually," many people were heard to remark. "All that work for nothing," said other critics. [Emphasis added.]

In 1946, Mr. Robert Cotton, a wealthy businessman and a founder of the Rural Beautification Society, offered Premier Walter Jones $100,000 to endow a provincial nursery that would supply planting material to Islanders in order to improve home surroundings, public areas, roadsides and generally to encourage rural beautification. His offer was accepted in 1949 and in 1951 the first shippings of trees were made from this nursery. In 1950 the *Provincial Forestry Act* was passed and, though it created a mechanism to limit softwood clearcut size, it was never enforced. In October of that year the Province hired its first forester, Mr. J. Frank Gaudet. The following year the Forestry Division was formed and an additional forester, Mr. Wendell M. Profitt, was hired. These two individuals led the development of forestry improvement efforts on both private and crown land in the Province.

The Province entered into a five-year Forestry Agreement with the Government of Canada for forest development with the result that a small nursery was established at Beach Grove in 1952. The demand for planting stock grew so that this nursery, by 1957, comprised

17 acres. In its first quarter century, the Provincial Forestry Division planted more than 4 1/2 million trees, all produced at Beach Grove.

In spite of these mid-twentieth century efforts to increase the quantity and quality of Island trees, the 1963 report on *Land Utilization in Prince Edward Island* by Raymond, McClellan and Rayburn revealed somewhat startling findings about the status of trees in the Province. At p. 56 they wrote:

> Although great emphasis is usually placed on the agricultural aspects of Prince Edward Island, the fact is that over two-fifths of the Island is covered by woodland. It plays a much less significant role in the Island's economy than in any of the other Atlantic provinces, but still ranks in terms of area, at least, as one of the major uses of land. *Dense woodland,* for instance, *covers an area greater than that of potatoes, grain and improved pasture combined.*
>
> Woodland figures used in this report, based on field work and airphoto interpretation, are the most accurate available for forest resources in Prince Edward Island. *Previous estimates of the acreage of woodland on the Island have been far too low.* In the absence of a comprehensive forest inventory, these estimates have been based on the Federal Census of Agriculture, which lists only the area of woodland on farms. *For 1956 the total woodland acreage is reported as 334,226 acres, yet measurement of the woodland categories on the land-use maps reveals a total woodland area of 598,000 acres.* The main reason for this discrepancy lies in the exclusion from the census figures of the 332,297 acres that were not in farms in 1956. Some 47,000 acres of this non-farm land was in townsites, sand dunes and bogs, but much of the remaining 285,000 acres consisted of unoccupied woodland. Possibly, a second source of discrepancy is in the under-enumeration of woodland in the census. This pertains especially to the scrub woodland and open woodland. Clark . . . found that "What appears, superficially, to be a young spruce forest (and would certainly be so interpreted from the photographs) continues to be carried on the "mental books" of the farmer as "old pasture" and will be so recorded as long as any grazing for sheep, cattle or hogs is obtained from it". [Emphasis added]

In other words, the amount of land on which trees grew was more than the aggregate of land used for the core of agricultural uses but *government was unaware of almost half of this woodland!*

This false perception about the extent of land used by trees in the Province is still widespread. In a survey prepared by IEA Consulting Group Ltd. of Charlottetown in 1984 it was found that only 45% of the 350 respondents disagreed with the false statement: "Less than one quarter of P.E.I. is covered by forests." In other words the majority very much underestimated the extent of land used by trees in the aggregate acreage of the Province.

Land Utilization in Prince Edward Island considered the subject of trees in further detail within its discussion of "woodland", identifying the distribution, types of woodland, the role of forestry in the economy, and woodlot management as specific subject headings. The data provided in the contents of this report provides an interesting comparative basis to match with the situation today. Before we address this, however, let us review developments in the public sector over the intervening years. J. F. Gaudet takes up the story in *Forestry Past and Present on Prince Edward Island,* at pp. 59-60, 62:

In 1969 a 15-year Federal-Provincial Program for social and economic advancement of the province was initiated. The Comprehensive Development Plan, as it was called, was to be divided into three phases:

First Phase went from April 1, 1969, to March 31, 1974;
Second Phase will go from April 1, 1974, to March 31, 1980;
Third Phase will go from April 1, 1980, to March 31, 1984.

In giving the background of forestry, the plan developers realized that the value of output from primary forest operations was not a large element in the province's economy. However, since 43% of the Island's land area was taken up by woodland, there existed room for improvement in the management of this resource.

The main objective in the forestry sector was to establish general guidelines for development which were consistent with the optimum land use concepts of the overall Plan. Within this framework, the economic objectives were to permit the implementation of a long-range forest management program, thereby improving productivity in the use of the resource and to rationalize the processing activities so that more productive use of forest products could be realized in order to maximize their benefits to the economy.

In order to implement this strategy, the first step was the creation of a Provincial Forest Development Agency which was to oversee and organize the program.

Planners calculated that the total amount of land that might become available to the Forest Development Agency was 161,600 ha. (400,000 acres) made up as follows:

Presently productive forest	- 96,000 ha. (239,000 acres)
Unproductive forest	- 34,450 ha. (85,100 acres)
Non-forest land	- 27,840 ha. (68,800 acres)

The presently productive forest area that would become available would be cut and planted so as to establish it on a 50-year rotation. This would involve cutting and planting approximately 1,934 hectares (4,780 acres) a year.

The acquired unproductive forest would be subject to stand improvement during the life of the Plan and this was costed on the assumption that one-fifteenth would be cleared each year . . . It is intended that half of the planting could be through self-regeneration; . . . . The yield from cutting was expected to be low in the first few years . . . In June of 1971 the Federal-Provincial Agreement covering a Comprehensive Development Plan for the province was amended.

In this amended agreement, no change in the forestry plan took place; the planners still talked about forming a Provincial Forest Development Agency to organize and develop a forestry program for the province.

It seemed strange at the beginning of the Plan that, *although the planners realized the continuance of the forests in the province at no time did they make reference to the important part these same woodlands play in our main industry, agriculture, how these woodlands act in keeping the water table up, what excellent wind barriers they provide for the protection of crops, how they maintain soil moisture and prevent erosion and the many other uses trees have.*

> In carrying out a program or project, the province had to submit the following to a Planning Board made up of both Federal and Provincial representatives:
>
> (a) The object of the project or program
>
> (b) How the project or program was to be carried out
>
> (c) The time schedule involved
>
> (d) The priority of the program or project in terms of the plan
>
> (e) The cost of the program or project
>
> (f) The share of any revenue and assets from the program or project that would accrue to Canada and the province
>
> (g) The expected benefits that would accrue from the program or project.
>
> No explanation was given as to why a Provincial Forest Development Agency was not formed, . . . and the Forestry Division assumed the responsibility of developing its own program and projects. [Emphasis added]

The *Report of the 1973 Royal Commission on Land Ownership and Land Use* considered "forestry" briefly in two separate passages. In addition, it made recommendations relating to woodland management and financial help for sawmills. The first commentary, found at pp. 35-37 of the *Report of the Royal Commission on Land Ownership and Land Use* stated:

> Although the Island woodlot has always played a very faint second fiddle to the farm, woodland does cover some 47 per cent of the provincial land surface and seems certain to expand. The decline in improved census farm acreage from 645,492 in 1956 to 494,131 acres in 1971 gives clear indication of the continuing reversion of farmland back to trees.
>
> Forested acreage is divided into approximately 7,000 small woodlots of which at least 3,000 contain less than 30 acres. Such small holdings have defied serious management over the years and have degenerated in both quality and species composition. Even so, they tend on average to be underused. While there is over-cutting in some areas, less than half of total annual growth is being harvested for the Island as a whole. A recent sample survey of 2,000 of the larger woodlot owners indicated that 56.7% had never received any income from their woodlots. It also indicated that 86% did not wish to expand their woodlots, mainly because of "insufficient return".
>
> Poor marketing and poor use of wood are at least partly responsible for the low returns to Island woodlots. Because the small-scale, seasonal and undercapitalized Island sawmills are unable to compete with pulp dealers in the roadside purchase of sawlogs, much of this material is being sold for pulp. The lumber which is sawn on the Island brings a poor return since in most cases it does to meet C.M.H.C. mortgage standards. Hence, most of the finished lumber used in the construction of Island homes is imported from the mainland.

In a second passage entitled "Planning Guidelines Forestry", the 1973 Royal Commission considered land ownership options that might have the most optimum effects for good forest management. At pp. 55-6, the *Report* stated:

> The expanding forest acreage which now covers virtually half (47%) of the Island is capable of producing very much more, and certainly its productivity should be improved. However, this can only happen over the long term and, to be economic, will require management in very much larger blocks.
>
> There are three possible methods to achieve these larger management units: (1) government purchase; (2) individual purchase; or (3) co-operative ownership and/or forest management groups.
>
> A major Government purchase program must be rejected on the basis of cost and general policy. A good case can be made for a limited amount of purchase for the demonstration of management techniques. The Land Development Corporation might with the good advice of foresters pick up scattered holdings and should withhold [*sic*] the woodlots from lands resold to farmers, to assist in rounding out the management blocks of co-operative forest management groups.
>
> Serious attempts at individual purchase for forest management have not been attempted on any significant scale to date, and seem unlikely in the future.
>
> The third co-operative alternative seems the most likely to succeed. A number of successful precedents already exist in the Province of Quebec and have been examined by Island foresters. The social objectives are also sound since they encourage local involvement and control, as well as the return of incomes to the local community. The cost to government in land would be minimal, freeing its financial and staff resources for more productive efforts in supportive research and management assistance.
>
> Areas with the potential for forest management should become increasingly apparent with the preparation of the general land use plan. Local efforts to form cooperative management units should be stimulated through the involvement of local forest owners in land use planning activities at the community level. The minimum maintenance requirement recommended in this report for the holdings of all corporations, non-residents and non-occupiers, should augment the acreage available for cooperative woodlot management units.
>
> To encourage the utilization of sawlogs in the production of good quality Island-sawn lumber, it is recommended that lines of credit be extended to local sawmill operators so as to enable them (1) to compete with pulpwood buyers in the roadside purchase of logs, and (2) to modernize facilities and equipment in their mills.

The two recommendations of the 1973 Royal Commission in relation to forestry, contained in its *Report* at pp. 77-78, reflected the Commission's view on the most feasible way to encourage better management practices. In the first of these, the Commission recommended that: "[t]he provincial government should encourage and help woodlot owners who will enter into cooperative woodlot management arrangements through: (a) assistance in the preparation of woodlot management plans and the provision of technical advice; (b) placing adjacent Crown lands, if any, in the woodlot management unit; (c) instructing the Land Development Corporation to not sell woodland that it acquires, but to hold for eventual inclusion in woodlot management units." A second recommendation called for "[l]ines of credit . . . extended to small Island sawmills to encourage the production of better quality lumber, and to enable competition with pulp dealers in the roadside purchase of logs."

The role of the Land Development Corporation in relation to the management of Island trees was a prominent factor in the early years of the Comprehensive Development Plan. Once more we rely on Gaudet's *Forestry Past and Present on Prince Edward Island* to explain the connection. At pp. 62-3, he wrote:

> One of the main benefits of the plan, as far as forestry was concerned was the acquisition of land by the Land Development Corporation. Land that was classified as being non-agricultural was categorized as either agricultural, forestry, fish and wildlife, or tourism land. A committee made up of representatives from the Land Development Corporation, Agriculture, Fish and Wildlife, Tourism, and Forestry looked at each property after it was purchased by L.D.C. If the land was clear of woodland and classed as a two or three under the Canada Land Inventory, it was turned over to agriculture for management. If it was classed as four, five or lower, it was turned over for management purposes only to the Division that could best put it to its optimum use.
>
> Before the acquisition of land through the L.D.C., the provincially-owned cleared lands that had reverted to the Crown through the failure of the owner to pay the old land tax and the lands that were obtained through the Agricultural Rehabilitation Development Act (ARDA) agreed to in 1965 had all been planted, and, as a result, a cut-back in nursery production had to take place.
>
> This cut-back in nursery production was quite evident in the planting figures. In the year 1970, nearly half a million trees were planted on Crown land; in 1973 only one hundred thousand were planted.
>
> Because the land to be managed by the Forestry Division increased under the L.D.C. program, the objective of which was to plant 5,000,000 trees a year, additional land had to be purchased to meet this twenty-fold increase in production. As a result, a 32.3 hectare (80 acre) farm was purchased on the Hurry Road, West Royalty, to complement the 6.8 hectare (17 acre) nursery at Beach Grove.

Let us pause for a moment in this chronology and put these numbers into perspective. It would appear from Mr. Gaudet's account that the Comprehensive Development Plan called for planting *more trees per year on Crown land than the Province had planted on all lands over the first quarter of a century in the operation of the forestry division* (5 million versus 4 1/2 million). It would appear from the data in the annual Report of the Department of Energy and Forestry for the fiscal year ending March 31, 1988, (Table 1 below) that these quantity goals were never achieved. In 1987-88, there were 423,780 seedlings planted on Crown land - fewer than the total for 1970; when combined with 2,321,969 seedlings planted on private land (total planted in 1987-88: 2,778,848) it would seem that the annual quantity was little better than half the objective once suggested for Crown land alone. Planting totals for five of the most recent years indicate just how ambitious the objective of 5 million plantings per year on L.D.C. lands alone would appear to be! On the other hand, these totals also demonstrate that the Province was, in the 1980's, now planting in three years the same volume of seedlings that once spanned a planting time of 25 years.

TABLE 1

PLANTING TOTALS BY SPECIES

1983 - 1988

SPECIES	**83/84**	**84/85**	**85/86**	**86/87**	**87/88**
jack pine	19885	--	--	--	--
red pine	230000	267600	242077	592100	593496
white pine	--	--	50456	57600	41520
Austrian pine	--	63600	44911	41000	90490
white spruce	412005	549200	441927	463000	541196
black spruce	636404	536600	348047	522600	858216
eastern larch	121396	--	178649	179500	385996
balsam fir	65100	115700	210588	225837	239837
white cedar	--	14500	--	--	--
hybrid poplar	7675	23700	28200	27500	28097
TOTAL	1492456	1470900	1544855	2109200	2778848

Quality, as well as quantity, for Island trees became a key focus in the Comprehensive Development Plan. *Tree improvement efforts were begun, initially concentrating on a renewal of the Acadian forest* with such species as yellow birch, butternut, red oak, red spruce and white spruce. *Forestry Past and Present on Prince Edward Island,* published in 1979, outlined the program that was followed in the latter portion of that decade. Selected passages from J. F. Gaudet's chronology, at pp. 63-9, outlines these developments:

> Early in 1973 the Forestry Branch was called on to submit to the Planning Board, in writing, its entire forestry program, together with each individual project, a cost-benefit analysis of each, and its recommendations for future forestry improvement and expansion.
>
> This committee proposed a number of recommendations to Planning Board. They, after discussing all the recommendations thoroughly, approved them in principle and asked the Branch to outline its priorities.
>
> The Forestry Branch felt that the Elite Tree Seed Program should take priority over all the rest because of the province's past history of forest destruction by cutting and fire.
>
> Planning Board, Treasury Board, and the Cabinet all gave their approval to the program and the part-time services of a geneticist from the Canadian Forest Services were obtained and the program launched.
>
> In April, 1974, forestry was given an added sign of encouragement under the Second Phase of the Development Plan. Programs and projects were cost-shared, with the Federal Government contributing 90% and the Provincial Government 10%. . . .
>
> A hothouse with attached headerhouse was started in the fall of 1974 and completed in the spring of 1975. A seed-drying room, a cold storage, and another hothouse were added the following year.
>
> In 1978, an office was constructed and attached to the headerhouse. On its completion, the Forestry Branch staff moved from the Provincial Administrative Building Annex to the Hurry Road site.

> The services of a full-time geneticist had been engaged and the forestry policy was launched.
>
> *At first the policy was very broad being the maintenance of sufficient woodland in the province to protect the soil, water and climate and, as far as possible, satisfy the needs of the people of the province and its industries.*
>
> Intensive forest management was the priority program that the Forestry Branch set for themselves and they outlined their objectives as follows:
>
> (1) the genetic improvement of all commercially important tree species of the province;
>
> (2) the establishment of fast-growing, wind-resistant trees to protect crops and to prevent soil erosion;
>
> (3) the diversification of woodlands with improved tree species;
>
> (4) the re-introduction of those important species that were extinct or that are nearly so.
>
> In initiating the tree improvement program for the province, only seed from genetically superior trees that remained were taken. . . .
>
> At first, the white spruce was selected because it was the most common tree species in the Province.
>
> Literally thousands of white spruce were looked at and many hours were spent in the location of genetically superior trees. . . .
>
> ....
>
> The resulting seed will retain the same characteristics of the genetically good parent trees that had been chosen.
>
> So far, one white spruce seed orchard has been established.
>
> Similar work is planned for the genetic improvement of the commercially important tree species of the province.
>
> In 1978, two professors in forest genetics, one from Yale University and the other from the University of North Carolina, were engaged by the province to evaluate its forestry program.
>
> They both agreed that the overall objectives of the Forestry Branch were sound and workable, but that the time factor in which these were to be implemented was the key factor and that the province would be very fortunate if the proposal to convert biomass from unmanaged woodlots to fuel is approved. Clearing of unproductive forests will be an effective first step in preparing the site for the planting and culture of a new forest utilizing trees especially bred for their commercial and/or social values.

They outlined the basic goals as the assurance of sufficient wood supply to meet the demands of the proposed energy program and then to produce as much additional high value products as possible.

They said that the program, to be successful, must be twopronged, with an operational phase and a research development phase.

In the operational phase, which deals with nursery production, seed collection, seed orchard establishment, planting, and forest management techniques, all activities should be oriented towards getting as many good trees in the ground and growing well as soon as possible. This is the "short-term" approach to using what we have to the fullest. The "long-term" approach will feature research and development. It will include such things as gene preservation, testing of secondary conifer species, testing of exotics, and testing of hardwoods. The ongoing advanced generation development and breeding will be under research and development.

There was much discussion about which among the twenty or so commercial species should be emphasized. The consensus was that a few species should be chosen for intensive development, while the others will be preserved and worked on at a low level. They both agreed that the chosen species must have good utility, good growth, few pests, be handleable in plantation forestry, and as much as possible be known about them.

Black spruce was chosen as one of the two primary species on which development efforts would be centered. It submits readily to genetic selection and the wood is good for both fibre and solid wood products. Furthermore, there have been considerable management and silviculture studies already made of black spruce and it is relatively free, among spruces, from budworm.

Larch was then chosen because it is the fastest growing conifer in the province. Its wood is very useful for a number of products, it can grow on several sites, and is easily handled in the nursery.

Red pine was chosen because it is a species not very amenable to genetic improvement and can be used in its intrinsic state. It will grow on most sites in P.E.I. and its wood is good for both lumber and fibre.

Balsam fir should be emphasized for Christmas tree production. Improvement is needed in its nursery development but, in other ways, it is easily handled. It can be grown on short rotations for a high value product.

The consultants agreed that, although techniques for handling hardwoods were not perfected and because they are so sensitive to culture that large-scale operational programs of reforestation are ill-advised, solution to management and breeding problems should be carried forth by research and development. Yellow birch was suggested because it has received some attention in planting programs and because some information is available on its genetic variation. It has a valuable wood for panelling, furniture, and fibre products. Furthermore, it produces masses of seed, making production of seedlings for planting economically attractive.

In outlining the basic goal as being the assurance of a sufficient wood supply to meet the demands of the proposed energy program, *at no time was the heat value of the various species suggested taken into consideration.* For example, the number of air-dried cords (4' x 8' x 8') of black spruce required to equal 2,000 pounds of anthracite coal is two, while that of a sugar maple is 1.08 and 1.30. In other words, one cord of black spruce produces 19.1 million BTUs while one cord of sugar maple produces 29 million BTUs.

> *At no time were trees for windbreaks mentioned either. Since agriculture is our main industry and since the province is so windy, fast-growing trees to protect agricultural crops should be given a high priority.*
>
> *In the formulation of any forestry program for the future of the province, we must not lose [sic] sight of the basic area of concern.*
>
> *To all Islanders, this should be the maintenance of sufficient forested areas to protect the climate, soil, and water resources of the province.*
>
> When this is done, then - and only then - can the needs of the people and the wood-using industries be met. [Emphasis added.]

Mr. Gaudet's account of *Forestry Past and Present on Prince Edward Island* ends in 1979, the year his work was published. In that year, the thrust of the forestry program was changed and the altered direction remains a subject of controversy today. Essentially, the effort to renew the Acadian forest was abandoned and the forestry effort, spearheaded by the provincial government, was altered to concentrate on the planting of coniferous species in the management of forest stands. While the direction of the forestry program was altered in the last decade, the final phase of the Comprehensive Development Plan provided for what was later termed "a tremendous expansion of the forestry program." This description came from a report prepared in 1986 by Dendron Resource Surveys Ltd., which described the progress being made before they were called in to prepare a 20-year development plan for forestry development. At pp. 7-8, the Dendron report summarized events in the first half of the current decade in this passage:

> The Private Land Forest Management Assistance Program was launched in 1980 to foster more interest in forest management on private lands, and to provide a stimulus for the development of silvicultural contractors. The acquisition of forest land through the Land Development Corporation provided the Province with a reserve of Crown land, much of it under the management of the Forestry Branch. Much effort during Phase Three was spent in improving Crown land through the reforestation of 1,000 hectares from 1979 to 1982, stand improvement on 200 hectares and the construction of access roads on many of these properties.
>
> Seedling production rose to one million in 1980 and is expected to average 1.25 million per year through 1988. A tree improvement program was begun in 1976 and work continues on the development of genetically superior seed for the reforestation program.
>
> Stand improvement, identified as a critical element of the current five-year program has expanded from a few hectares per year to the point where, in terms of area treated, it exceeded the reforestation program in 1982. Silvicultural and woodlot technology projects have been undertaken to complement operational stand improvement, and to develop more efficient equipment and management techniques.
>
> The Forest and Biomass Inventory, the first in Canada to measure total forest biomass, was completed in 1982 and proved an invaluable tool in the development of sound prescriptions for the Island's forest.

The Canada/P.E.I. Forest Resource Development Agreement signed in 1983 provides five-year funding in the amount of $20.144 million, and gives the continuity required to maintain programs begun under the Comprehensive Development Plan.

The 1983-88 Canada/Prince Edward Island Forest Resource Development Agreement provided funding that allowed the provincial forestry branch to develop tree inventory information, to establish seedling production orchards of superior trees, to expand forest nursery production, to implement site preparation for forestry plantations, to implement maintenance on forestry plantations, and to expand and implement the thinning of existing hardwood and softwood forests to improve their growth and quality.

In June, 1988, a second Canada/Prince Edward Island Forest Resource Development Agreement was signed for a five-year term that spans 1988 through 1993.

We asked the Department of Energy and Forestry to provide us with an overview of its activities under these new agreements.

In describing the nature of the forest, the Department pointed out that Prince Edward Island's forest now covers 698,000 acres of land or 48% of the land in the province. This forest land base is owned by some 20,000 landowners and the average size of each holding is between 30 and 40 acres of forest land.

In 1980, the Department of Energy and Forestry obtained aerial photography and photo interpretation of all land and water portions of the Province of Prince Edward Island. In addition to the interpretation of land forms, information was collected on the type of forest stands, the volume of commercial wood, and the volume of biomass that existed in the province's forests. This data indicated that 37% of the forest was in a softwood covertype, 13% was in a mixed covertype dominated by softwood, 21% was in a mixed covertype dominated by hardwood, and 29% was a hardwood covertype.

This study also showed that the average age of the forest was between 50 and 60 years of age. For hardwoods, we were advised, this means that the forest is young, as the life expectancy of tolerant species (e.g. sugar maple) is in excess of 200 years. While the softwood component is also relatively young when compared to the normal growing lifespans of conifers in natural stands, a closer interpretation of the results indicated to departmental officials that much of the softwood resource consists of white spruce growing on abandoned farmland. This old field white spruce, as it is called, dies when it is between 40 and 60 years of age. Since the vast majority of the old field white spruce is now between 30 and 50 years of age, a large portion of the softwood forest will be lost in the next 20 years, according to this analysis. This has led to the forecast that there will be an over-supply of softwood in the near future, particularly an over-supply of low quality softwood fibre. We were advised that efforts by the Province to encourage the utilization of chipwood as an energy source is a direct consequence of the predicted over-supply of softwood fibre.

We learned from departmental officials that the dilemma posed in the management of old field white spruce stands is that, to the forester, there is only one silvicultural option, namely, clear-cutting. If left to collapse these stands are removed from commercial production for an extended period as they regenerate to pin cherry, poplar and raspberry. Poplar and pin cherry are not merchantable species as markets for their wood are nonexistent. White spruce is a shallowly-rooted tree and is prone to blowdown when mature stands are spaced. In addition to the potential for blowdown, there is essentially no financial return from improved growth where mature old field white spruce is thinned as the trees die at such a young age. Strip-cutting could be used to establish regeneration of the cut strips but the rapid onset of this decline and the blowdown that is likely to occur in most instances would result in the loss of the retention strips between the strip cuts. This means that the landowner would lose a minimum of fifty percent of the stumpage value on the particular stand and successful regeneration would be only partly achieved. The Department of Energy and Forestry was of the view that the only viable approach to the management of this land is to provide incentives to encourage forestry contractors to salvage the wood from these declining areas rather than cut green wood which should be reserved for cutting in the future to minimize wood shortages. The extremely limited markets for the low quality pulpwood that makes up a significant proportion of the wood on these stands and the limited availability of incentives for this work means that this approach alone is not adequate to deal with the volume of wood from areas that will die in the next twenty years. To alleviate some of this problem the Department of Energy and Forestry has encouraged the development of wood biomass burning units and harvesting operations for 12,500 cords (25,000 green tonnes). Even with these combined efforts, the Department was of the view that *in excess of 90,000 cords (180,000 green tonnes) of potential biomass will be lost annually* due to insufficient capacity of markets to handle this wood.

The management of old field white spruce is of particular concern to the Department which, in 1985, initiated a research project to identify the causes and factors for the early mortality of white spruce regenerating on abandoned agricultural land. The cause for the rapid decline of wood quality in these stands was identified as a number of pathogenic fungi that are common in most forest land. These fungi induce heart rot in the trees and in the span of a decade or less can convert a stand which would produce studwood and logs into a stand that would produce, at best, second grade pulpwood. The analysis of foliage on different aged white spruce stands growing on old field has suggested that the reason for the rapid decline is a deficiency of one to several micro nutrients. In conjunction with Forestry Canada, the Department of Energy and Forestry has implemented trials to test whether this decline can be stopped through the application of these micro nutrients.

The 1980 forest resource inventory identified an average stand size of between 4 and 7 acres. When this is combined with average property holdings of between 30 and 40 acres for individual landowners, it meant that each forest property averages about 7 or 8 stands. We understand the size of individual harvesting operations is dependent on the size of stands which will be included in the harvesting operation. It is affected also by the size of the landowner's (or the contractor's) cutting operation and the equipment utilized in the cutting operation. In the softwood forests, in excess of 80% of all the harvesting is implemented by commercial forestry contractors utilizing either skidders or forwarders to move the wood to the landing and tractor-trailers to move the pulpwood and logs to the mill. As the roadside price of wood on Prince Edward Island is significantly lower than that on the mainland, the profit margin for these operations is low and the forestry contractors must be concerned with the efficiency of the harvesting and extraction operations. We were advised that under these conditions, a selective harvesting of mature stands of softwood by forestry contractors is virtually impossible. In addition to the economic viability, we learned that studies undertaken by the Department of Energy and Forestry suggests that selective cutting in mature old field white spruce stands will not provide adequate regeneration of commercial trees to replace the stand and will increase the probability of the residual stand blowdown.

The Departmental position is that reclamation and the reforestation of old field white spruce stands will improve forest productivity, will support the creation of an aesthetically pleasing forest, and will create wildlife habitat which is appropriate for many species of birds and mammals in our province. *We were advised that the alternative to this approach is the rapid decline and death of over 88,000 acres of old field white spruce forest in the next 20 years.*

Since the adoption of the coniferous reforestation program in 1979, a number of groups have suggested that the Department is creating large scale monocultures. In 1989, the Department of Energy and Forestry produced approximately 2,000,000 seedlings. The species produced were red pine, white pine, Austrian pine, white spruce, black spruce, eastern larch and balsam fir. Approximately 5% of these trees are allocated to pick-up orders, 10% to Christmas tree production and 5% to hedgerow creation. The balance are planted on both private and Crown lands under either the Forest Resource Development Agreement or under the private land planting program paid for by the landowner. The average size of over 1,000 forestry plantations established between 1983 and 1988 is 3 acres with a range of 0.1 acres to 40 acres. Under the latest F.R.D.A. agreement, the minimum plantation size has been set at 2.5 acres so that the first thinning will produce at least a truckload of pulp. In most instances, trees are being planted on reclaimed old field white spruce sites, barrens and/or abandoned farmland dominated by alder. In many instances or larger sites, more than one species is planted on the site, each in their own blocks.

Each of the individual trees produced by the forest nursery has its own way of growing and developing in a stand. This is referred to as their silvics. Eastern larch grows so rapidly that there is no other species which can grow with it in a compatible manner. Experiments with inter-plantings of red pine and white pine in other provinces have shown that one or the other species will dominate the site and eliminate the other. The capability of mixed species plantings of white and black spruce or either of these species and the pines is unknown at this time. The Department has experimented and will continue to experiment on a small scale with multiple species plantations in an attempt to develop compatible companion plantings which yield trees of sufficient quality and form to justify production.

The Department currently makes red pine, Austrian pine, white spruce, black spruce and eastern larch available for hedgerow creation. The Department discontinued the use of hybrid poplar because of the high cost of production on the nursery and because of problems with insects and disease in the field. Once a softwood hedgerow is established its use by birds and the lack of maintenance beneath the tree ensures the creation of a multiple species shrub and herbaceous layer beneath the trees. In the near future the Department will be issuing brochures on hedgerows and hardwood transplanting which will enable landowners to add additional species diversity in their hedgerows should they so wish. The Department of Energy and Forestry, in conjunction with the Department of Agriculture, prepared a publication in the early 1980's on the creation of hedgerows and windbreaks for farm use.

We understand that an analysis of the stand density of both softwood and hardwood stands indicated that virtually all stands observed in the province are vastly overstocked with trees. The production of trees at stand densities 12 times or more higher than required to grow commercial-sized trees means significant delays in the production of commercial-sized wood in individual forest stands. When these stands are young and are growing vigorously, the stand density can be altered by the removal of poor quality and poorly formed trees to allow the remaining trees to grow at a more rapid rate. When trees are approaching their upper lifespan or are infected by diseases, these stands do not warrant thinning and some form of clearcut harvest is required, we were advised.

The Department informed us that it actively encourages stand improvement in tolerant hardwood stands (e.g. sugar maple, yellow birch) which have the potential to produce one hundred sawlog quality trees per acre or which have the ability to produce maple syrup. In certain instances, the Department does support strip cutting, and in some cases, clear-cutting of hardwood stands where the quality of the stands is insufficient to warrant silvicultural investments in thinning. We were advised that the vast majority of hardwood clear-cutting is occurring outside the Forest Resource Development Agreement's Private Land Silvicultural Program. The Department has excluded certain properties from the program where hardwood clear-cutting was occurring in stands which would support thinning operations. According to departmental officials, in the mid 1970's, the Department's hardwood reforestation effort was primarily on yellow birch with some experimentation on butternut and red oak. The outplantings that occurred at that time were, for the most part, failures, in their view, as the Department did not have sufficient information on appropriate tree production techniques, site preparation techniques and stand establishment practices. Since the hardwood reforestation program was abandoned in 1979 in favour of adopting the conifer reforestation program, the Department has experimented on a small scale with hardwood plantation-established techniques. We were told that the Department has devised appropriate methods for the reforestation of yellow birch but still does not have adequate information on how to grow trees of the proper form (straight and branch free) to make them valuable for sawlogs. In addition to the work with yellow birch, experimentation has been ongoing with strip cutting and interplanting programs to test their viability to establish tolerant hardwoods. We were advised that it is the intention of the Department of Energy and Forestry to continue testing methods to establish and manage hardwood stands. The Department has formed a "hardwood working group" to further explore the feasibility of hardwood plantings and to define the types of management that will be required to manage hardwood plantations or mixed species plantations. *The Department is of the view that it is premature at this time to enter into a largescale hardwood reforestation program without an adequate knowledge of nursery production techniques, stand establishment techniques and stand management techniques.*

The Department of Energy and Forestry advised us it has adopted a forest extension and incentive approach to encourage landowners to use selective cutting of hardwood rather than clear-cutting. Under the 1988-93 F.R.D.A. over one million dollars of incentive funds have been allocated to implement 4,500 acres of hardwood thinning. Efforts to identify the impact of hardwood clear-cutting through the use of a satellite imagery process to quantify the area being clear-cut were unsuccessful. The Department will not be able to predict or evaluate the impact of hardwood clear-cutting operations until the completion of the 1990 aerial photography and the subsequent photo interpretation and plot development work. The analysis of this data will be a high priority of the Department once the data is available. At that time, appropriate measures will have to be taken to address the problems which are identified.

Since the oil crisis of the last decade the utilization of hardwood fuels in Prince Edward Island has climbed to an annual figure in excess of 85,000 cords. Approximately 6% of this wood is produced by commercial thinning. Much of the balance, we were advised, is produced by selection cutting by individual landowners or by commercial contractors or landowners clearcutting hardwood. The remaining volume comes from mixed wood clear-cutting and from trucking hardwood in from the mainland. *The proportion of these clear-cut tolerant hardwood stands that will regenerate successfully in tolerant hardwoods is unknown. We were advised that both the forestry literature and local experience among professional foresters to date suggests that the thinning of hardwood stands can be used to successfully regenerate thinned stands into new hardwood stands. We were advised as well that the full impact of the current harvesting techniques will not be known until the next forest inventory cycle is completed in 1991.*

The Department was of the view that it has adopted a proactive approach in attempting to resolve the many concerns over the use of forested lands, an approach defined in the paper entitled "A Forest Policy for Prince Edward Island" released in 1987. Officials indicated this policy incorporates suggestions made during Island-wide public hearings on the 20-Year Forestry Plan published by the Minister the previous year. In addition, the Department has released the Prince Edward Island Forest Fire Policy and Procedures document, which defines the responsibilities for wildfire suppression, to the various agencies involved in extinguishing wildfires on Prince Edward Island. This paper as well, we were told, incorporates amendments suggested at reviews of the policy by representatives of the volunteer fire departments from across the Island. These two policy initiatives, we were advised, set the scene for the preparation of the *Forest Management Act*, enacted in 1988.

A departmental analysis of the objectives for which landowners are managing their lands under the Forest Resource Development Agreement incentive program indicated that 82% were interested in fuelwood, 63% in lumber production, 27% in pulpwood production, 21% in wildlife enhancement, 21% in recreation and aesthetics, 20% in Christmas tree production, 14.7% in hardwood sawlog production and 9.5% in maple syrup production. Many of the individuals interested in recreation or aesthetics did not indicate a strong interest in wildlife management, according to the analysis, so when these three objectives were totalled, 31.7% of surveyed landowners indicated an interest in managing their property for reasons other than production of products derived directly from trees.

To achieve these various objectives on individual parcels of forested lands, the Department of Energy and Forestry provides foresters and forest technicians to write management plans for that landowner's individual piece of forest. The District Forest Manager and technicians are given the responsibility to ensure that each management plan is consistent with the Provincial Conservation Strategy, the Forest Policy for Prince Edward

Island, and the *Forest Management Act*. The overall guidance of forest management is achieved through the allocation of forest incentives for various types of work.

In the management of Crown lands, the Department pointed out that approximately 10% of the forest land in Prince Edward Island is either owned or controlled by the provincial government. Forty thousand acres of this land base has been assigned to the Department of Energy and Forestry for management purposes. Intensive forest management techniques including stand reclamation, plantation establishment, thinning, and road and bridge construction have been on going on this Crown land for the past eight years. In 1987 and 1988, the district managers who are assigned the responsibilities for the preparation of management plans for these lands, entered the best available stand information in computers and used forest growth stimulation models to test the effectiveness of various levels of planting, thinning and site reclamation. Through the application of the work planned on Crown land, the Department expressed optimism that it will be able to enhance forest production on these lands; improve the utilization of timber; protect timber resources from fire, insects, disease, and unlawful harvesting; improve access to and travel on Crown forest lands; conserve and/or enhance wildlife resources using Crown land forests; protect representative forested natural areas; and provide improved forest recreational opportunities. When these Crown land forest management plans are completed, the *Forest Management Act* specifies that the plans will be made available to the public.

With respect to forest lands held in private ownership, the Department advised us that, since its inception, it has attempted to promote land stewardship practices through persuasive rather than coercive methods. The Department reminded us that the Forestry Branch, since its beginning in 1950, has attempted to promote land stewardship practices by the provision of information in many forms. In the early days, efforts were made to establish demonstration farm woodlots, to meet with individual landowners and groups of landowners and provide management advice, to recognize the accomplishments of individual woodlot owner/managers, to encourage forestry education in the schools, and to provide seedlings for reforestation by private landowners. Officials indicated that each of these extension methods has its merits, but none were thought to be successful in significantly altering the land stewardship practices on forested lands in the province.

In the late 1970's, the Department of Energy and Forestry, under the terms of the Comprehensive Development Plan, implemented an incentive program to encourage landowners to properly manage their woodlots. Under this program a number of woodlot management plans were prepared for clients and a small amount of forest improvement work was implemented. The low incentives for the improvement work and a lack of skilled workers to implement forest improvement work led to the discontinuation of this program, according to the Department. In 1981, the program was revamped by instituting a training program for silviculture workers, by increasing the incentive to implement various forms of forest improvement work, and by a concerted effort to encourage landowners to participate in the program. The Department was of the view that the success of this revised program lead to the signing of a 5-year Forest Resource Development Agreement between Prince Edward Island and Canada in 1985. Incentive programs and the training of forestry workers has continued since then and over 2,300 landowners have now enrolled in the incentive program.

In addition to this assistance work with individual landowners, we were advised that the Department has expended a significant amount of effort on generalized forest extension work. This includes: the creation of six demonstration woodlots representing the various forests types that are found in Prince Edward Island; the development of equipment plans to allow individual woodlot owners to build inexpensive harvesting equipment and so facilitate and improve stewardship by landowners themselves; the development of the 4-H Great Outdoors program leaders' guide; the organization of the annual woodlot management and equipment exhibition; the implementation of lecture programs to the schools; the development of an extensive library of audiovisual tapes for self-training woodlot owners; the publishing of a series of development notes advising woodlot owners on the productivity of certain forms of equipment or methods of implementing silvicultural operations; utilizing public broadcast media for radio and television presentations on woodlot management and for advertising; initiating woodlot management courses both at the community school and community college levels; increasing public awareness by signage programs and National Forest Week activities; developing the forest exhibit trailer visitation program; providing casual chainsaw training to improve landowners' abilities to implement safe work practices; and coordinating the training of silvicultural workers for industry.

Small-scale forest extraction equipment has been fabricated, tested and, where appropriate, demonstrated to show landowners wishing to manage their woodlands how to use and construct this equipment. The woodlot management and equipment exhibition is organized in September to show landowners various management practices and types of equipment suitable for use in our woodlands.

The Department indicated that it has supported the training of sawmillers and the improvement of sawmills to improve their ability to meet lumber grading requirements and to improve utilization of the sawlogs. No further details were provided.

In some limited instances, legislative restrictions have been placed on the management of certain treed lands. These restrictions include the rights to cut boundary-line trees, the form of management that is allowed on forested lands in National Parks, the starting of fires in areas near woodlands and, most recently, the management of lands adjacent to scenic heritage roads and streams.

A departmental analysis of the public comments to the Forestry Branch in the past decade suggested to officials at least three categories of forest areas that require special management. These were: woodland natural areas; scenic heritage roads; and riparian zones (streamside habitat).

The Department indicated that eleven woodland natural areas were identified in Prince Edward Island between the International Biological Program site assessment procedure and the 1982 Natural Areas Report prepared for government. These forested natural areas identify stands containing rare native trees and representative examples of high quality or old growth forest. The Department contracted with the Island Nature Trust to prepare brochures on the six government-owned sites and to collect biological information on the remaining sites in 1983. Since that time, the Department has worked, through the Royalty Oaks Management Committee, with the Island Nature Trust and the Village of East Royalty to ensure the protection and appropriate management of the Royalty Oaks Natural Area. In June of 1989, an interpretative trail was opened on this property to increase still further public awareness of forested natural areas in the province. Forest land management practices adopted on these six Crown properties have supported the retention and protection of these forested natural areas. In addition, we were advised that the provision of financial support to the Island Nature Trust for the hiring of their executive director and some support staff has allowed the Trust to acquire the funds necessary to implement a landowner contact program which provided the private landowners owning the remaining properties with information on the proper way to maintain their forested natural areas.

It was pointed out by Departmental officials that amendments to the Planning Act Regulations in 1988 allowed the designation of Scenic Heritage Roads through a cooperative program between the landowners, government and the Island Nature Trust. We understand that the types of forest management practices that are allowed along Scenic Heritage Roads have not been defined. One of the most fundamental questions that, we were told, must be answered is how to manage the old field white spruce in these areas. Some of the Scenic Heritage Roads have a significant proportion of old field white spruce. Many of these stands are currently collapsing and most of the balance will join the collapsing stands in the near future. Approaches must be developed on how to manage these scenic areas but first decisions must be reached on what to do in these areas.

We were advised that in 1981 the Department of Energy and Forestry adopted stringent regulations for the construction of stream-crossing culverts and bridges. To qualify for incentives, these regulations must be adhered to and a permit must be obtained from the Watershed Alteration Advisory Committee. The Schedule of Rates and Standards provided for the proper sizing of stream crossings so that the frequency of breaching is minimized, the proper stabilization of approach slopes to the bridge (seeding and rip rapping), and the provision of ditch run-offs outside the stream buffer zone. The Department was of the view that implementation of these restrictive measures has alleviated one of the most significant impacts of forest operations on stream habitats, namely siltation.

For the past several years, the Department has had ongoing discussions with the Federal Department of Fisheries and Oceans, the Fish and Wildlife Division and the Department of Environment on what form of forest management is appropriate in the area immediately adjacent to streams. Since 1981, the Department has had recommendations in private land management plans and Crown land management plans that restrict harvesting equipment access within a buffer strip which is a minimum of 10 m on either side of the stream and which extends to accommodate sloped land. The Department recommends that harvested wood from this zone be extracted using either cable, winch or horses to minimize the channelization of slopes along the stream which results in siltation.

We were advised that the management of the forest immediately adjacent to streams and the amount of material that should be allowed to fall into streams are topics on which no consensus has been reached. The Fish and Wildlife Division has been implementing the Montague Watershed Project to determine the various impacts of different silvicultural operations in the riparian zone. The majority of streams on Prince Edward Island are fed by groundwater and they are comparatively cold. We were told that clear-cutting of small portions of forest to the stream bank should not have a significant impact on these streams. On certain streams in the province there are water temperature problems which could adversely affect trout and salmon production. On these streams, we were advised, it may not be appropriate to clear-cut to the stream bank. When old field white spruce occupies the forest stand immediately adjacent to the stream there is really only one silvicultural option and that is clear-cutting, according to departmental personnel. If the stand is not removed, large number of blowdowns will criss-cross the stream, trapping silt and making fish passage difficult or, in some cases, impossible. We understand that discussions are continuing between the Department of Energy and Forestry, Department of Fisheries and Oceans, Department of Environment and the Fish and Wildlife Division to establish guidelines for the management of this zone, with the overall objective to be the creation of a relatively stable forest with a long lifespan so that the frequency of cutting operations along the stream zone is decreased. It cannot be eliminated, in the view of forestry personnel. Work is ongoing on the identification of other habitat requirements for this zone such as cavity trees and patches of cover for wildlife and set-back distances for reforestation and plantation maintenance.

The 1988-93 Forest Resource Development Agreement allocated the forest research monies in the development agreement to the control of Forestry Canada. The P.E.I. Forest Research Advisory Committee, composed of three members of Forestry Canada and three members of the P.E.I. Department of Energy and Forestry, reviews research priorities and recommends the utilization of these funds. In 1989, research projects were undertaken on the impacts of the seedling debarking weevil, bird use of managed and unmanaged forest, vegetation competition indices, small mammal production, evaluation methods, natural regeneration of tolerant hardwoods, the feasibility of white pine reforestation and a number of other projects. The priorities for these research projects are set jointly and are based on an interpretation of the needs of forest managers for silvicultural answers for application in the short term.

In 1988, the Department of Energy and Forestry acquired a Geographic Information System which, when all the data is entered, will allow the Department to compare historical land use from one inventory period to the next. The 1980 forest inventory and the forest stand boundaries for the 1935 aerial photography were in the final stages of entry into the G.I.S. system when the Department advised us of its activities. When the new aerial photography and photo interpretation is completed, which is scheduled to happen in 1991, this data as well will be entered in the computer and the net gains or loss of forest production can be established. The Department indicated this system will provide a powerful tool for the interpretation of changes in forest stand types throughout the province as well as an historical preference to land use in 1935.

Other forest research and improvement concerns have prompted the Department to create a number of permanent sample plots across the province to monitor tree growth and to allow better modelling of forest growth. The Silvicultural Development Section of the Department has created the Prince Edward Island Forestry Handbook which provides site index information on hardwoods and softwoods, stand volume tables, listing of extension materials and some information on wildlife management. This handbook is used by those managing the forest to check the applicability of specific recommendations on forest management. The tree improvement component of this section has selected "plus" trees and has established seed orchards for the production of improved seed for our forest nursery. The 1990 seedling planting program will be the first generation of conifer trees produced from these orchards of selected trees.

The Department of Energy and Forestry and the Fish and Wildlife Division have been meeting on a periodic basis since the early 1980's to discuss forest management techniques which will benefit wildlife, we were informed. In the initial stages, these discussions concerned the management of Fish and Wildlifecontrolled lands primarily in the Dromore block. The Department of Energy and Forestry has representatives on the Montague Watershed Project and provides F.R.D.A. incentives to the forestry technician working on that project to implement and test various stand treatments and their impact on wildlife. The Department indicated that the technicians and managers implementing forest management work on both Fish and Wildlife and Forestry lands recognized that neither staff had sufficient training or sufficient wildlife inventory data to effectively conduct wildlife enhancement on forested lands. In the spring of 1989, the Department of Energy and Forestry undertook the planning and implementation of an inter-disciplinary workshop entitled "Integration of Wildlife Enhancement in Forestry Prescriptions". All private land technicians and foresters and some of the foremen of the Forestry Branch as well as biologists and technicians from the Fish and Wildlife Division, P.E.I. Conservation Strategy, Island Nature Trust and the Federal Department of Fisheries and Oceans attended part or all of the workshop. Experts for various areas of Canada in recreation management, wildlife values and the needs of forest wildlife were utilized in a lecture and workshop format to convey information to managers of the forest on appropriate techniques for incorporating wildlife enhancement in forest land management prescriptions. A Forestry/Wildlife Manual was drafted and, we were advised, it was scheduled for completion in the near future.

The Department pointed out that the improvement of the forests on Crown lands in the province necessitates the construction of proper forest access roads into the stands that are managed. It recognized that these roads provided excellent areas for the general public to cross country ski, ski-doo, hunt, access streams for fishing, bird watching or indulge in other recreational activities. In 1989, the Department recommended that the P.E.I. Forest Research Advisory Committee implement bird surveys on unmanaged and managed forested lands. It coordinated this effort with the effort of the bird survey work of the Montague Watershed Project staff and, in the winter of 1989, the Department completed the preliminary work which is necessary to evaluate the impact of forest management activities on wildlife populations. Once the analysis of this information is completed, the Department indicated it will have the preliminary information required to be able to evaluate whether modifications of forest management practices are required and the direction these modifications will have to take. Further wildlife inventories will be required to develop models that can be used to accurately predict the overall impact of various forest management strategies.

The Department of Energy and Forestry advised us that it has provided technical assistance to communities within the province for many years. These services, provided through the Bunbury Nursery, provide an insect and disease identification service, planning for small communities for the implementation of tree planting programs and a small assistance program to allow community-based groups to undertake plantings. In addition, the Bunbury Nursery provides a wide variety of trees appropriate for urban plantings.

We were advised that in 1979, the Department of Energy and Forestry implemented sanitation programs to control the spread of Dutch elm disease on Prince Edward Island. The sanitation programs consisted of a complete destruction of trees identified as harbouring Dutch elm disease. In 1988, the disease spread in the forest reached such a level that sanitation programs on forested lands were impractical. Extension efforts were undertaken with the Charlottetown Tree Commission as far back as 1979 to inform them of the extent and magnitude of problems that could be created when Dutch elm disease reached the City. A partial tree inventory was completed of street trees and an extension program was provided to advise them of the maintenance program that would be required to ensure their elm trees would remain healthy. They were encouraged to undertake a tree replacement program to plan for the devastation that would occur once Dutch elm disease entered the City. Recently, the Department of Energy and Forestry offered the services of one of its forest technicians to the P.E.I. Federation of Municipalities so that the communities would have technical expertise available to develop appropriate Dutch elm disease control strategies and bylaws. The Department pointed out that Section 18 of the *Forest Management Act* creates the necessary legislative power to create regulations which will support these bylaws.

We also learned that the Department of Energy and Forestry is working with the Department of Education to integrate forest resource conservation programs into the curriculum of senior high school level as well as introduce non-curriculum components to other grades. Teaching kits have been prepared for forest extension programs for the general public and school groups and the Department has been active for a number of years in offering woodlot management courses through the community school system. In 1988, it initiated a more advanced forest management course at the community college level through three centres in the province. The Department is working actively to encourage additional resource conservation training in the school system in the province, but it must compete with the many other groups attempting to have their programs integrated into the school system.

The Forestry Branch has developed a series of six demonstration woodlots located across the province to demonstrate various methods of managing forest covertypes on different soil conditions. These woodlots have self-guided trails intended to show the application of various techniques to promote tree growth or implement multiple use. We were advised that the Forestry Branch offers guides to groups of individuals requesting tours of these woodlots, tours of the forest nursery or tours of certain other stand improvement activities, such as Christmas tree management.

We were told that in the mid 1980's, the National Fire Protection Agency initiated a "Wildfire Strikes Home" series of publications in an attempt to alleviate the damage caused by fires in the urban/wildland interface area. This series of publications provides recommendations on the planning of subdivisions adjacent to our in treed areas and covers such aspects as multiple access, provision of water supply to fight fire and the use of appropriate building materials to reduce potential fire starts in fire structures. Crown forest fires, even under low wind conditions, can cause fire starts in excess of one kilometre from the active flame front. As there are extremely few sites on Prince Edward Island that are more than one kilometre from woodland, the potential for damage from wildfire is readily apparent. The existence of large areas of old field white spruce magnifies the problem as the understorey present in these stands increases the likelihood of a ground fire becoming a crown fire.

We were advised that over 50% of the Island's forest has a potential to support rapidly spreading crown forest fire when the fire weather indices are high. The Department has implemented a volunteer fire fighter training program and a training program for staff members to upgrade the ability of forest fire control agencies in the province to combat wildfires. In addition, the Department has supported the development of a new integrated mobile radio system as one of the tools necessary to control rapidly spreading crown fire. The Department controls the issuance of fire permits. The fire fighting organizational structure, compensation policies and the responsibilities of the various parties are laid down in the Prince Edward Island Forest Fire Policy and Procedures Document established by the Department in 1987. The Department of Energy and Forestry is a signatory for two forest fire mutual aid resources sharing agreements, one with all the provinces and territories in Canada and the second under the Canada/United States Mutual Aid Agreement.

This overview, presented to us by the Department of Energy and Forestry, suggests there have been major changes in the whole approach to managing what amounts to almost half the land base in the province. We have no doubt that the Department has been busy in facing what are difficult challenges. Certainly the professional thrust of its officials has been directed towards an intensive revitalization of forestry in the province. In support of this, there have been numerous studies prepared and considerable publicity generated about these activities. Much work has been done (or is planned for the future) with dedicated personnel involved in this exercise.

We have considered the forest component of land use from an historical perspective in some detail, for the nature of trees - their slow growth and their longevity - means it was the decision-making of yesteryear that has determined the fate of our forested land usage of today. In judging the direction and tenor of current forest management, the outcome will be appraised best by generations yet to come, not by short-term perspectives. Yet we must now ask if the present thrust is for better or for worse. Will history judge this as another well-intentioned approach gone wrong? Or will current efforts mark a turning point, one that ultimately enhances Island woodlands?

To answer this and, simultaneously, to identify "major changes" with respect to land usage vis-a-vis forestry, we first sought appropriate benchmark data. Since brevity was the hallmark of the 1973 Royal Commission Report on Land Use and Land Ownership in terms of its consideration of the forest, we turned to the more detailed discussion on "woodland" found in the 1963 report on *Land Utilization in Prince Edward Island*. There, at pp. 56-58, authors Raymond, McClellan and Rayburn consider the distribution of trees throughout the Province in this passage:

Distribution: On the Island there exists a pronounced contrast in the distribution of woodland between the better farming regions of the centre of the Island and the poorer farming regions on either side. *In central Queens and the eastern Prince counties, woodland consists of scattered woodlots, usually less than fifty acres in size, embedded in a matrix of agricultural land; only one-fifth of the surface of these areas has a forest cover. At the other extreme, in the wet lands surrounding Egmont Bay, the forest belt of northern Kings and northeastern Queens, and in the southeastern hill lands, woodlands occur in blocks several hundred acres in extent,* separated by narrow ribbons of agricultural land, one to two fields deep, on either side of the road; *in each of these districts at least threefifths of the land area is forest-covered. Together, the woodland of these latter areas comprises half of all the woodland on the Island. The remaining districts occupy intermediate positions between these two poles.*

The present distribution of woodland reflects a complex intermixture of physical and cultural factors. While it is true, for instance, that very little of the Island's surface is unfit for agriculture, nevertheless certain soils have possessed defects so serious that they have remained in forest. As a result of poor natural drainage, soils of the Armadale and Egmont series have been utilized in only a few places and with meagre success. Covered by conifers whose slow-rotting stumps impeded cultivation for many years after land clearing, and needing expensive artificial drainage measures to produce the grain crops that bulk so large in the Island rotation, these soils have remained under forest. This is most evident in the wet lands east of Egmont Bay and in the forest belt of northern Kings and northeastern Queens, but is also true along the northwestern shore of Prince County where the traditional combination of fishing and farming has led to indifferent agricultural practices.

While on poorly drained series much of the land was never cleared, on the lighter soils of the Culloden and Dunstaffnage series much of the land was originally cleared but has since reverted to woodland. Thin and droughty to begin with, these soils have never received the fertilization necessary to increase, or even maintain their low inherent fertility; over the years they have simply become "farmed out". The southeastern hill lands and the hinterland of Montague exhibit vivid evidence of this trend in the dilapidated vacant dwellings and overgrown pastures which line their roads.

The presence of steeply sloping land throughout the hill lands of western Queens has contributed to a concentration of woodland higher within this district than on either side. Although in an earlier period steep slopes presented no barrier to land clearing, under modern conditions of farming they hinder the effective use of machinery. Rapid erosion lowers fertility levels and land reverts to bush.

As mentioned in the previous section on the distribution of abandoned grasslands, isolation has been a potent factor through much of the heavily forested interior of Kings. This trend has been less pronounced in Prince county, possibly because of the greater attachment of the Acadians to the land.

The same processes that have caused a concentration of woodland in the poorer farming areas in the past are still operating at the present time. It is reasonable to expect that in the future the area of woodland will continue to expand at both ends of the Island and in the central hill lands, as the fields that appear as grassland on the present map revert to forest. [Emphasis added.]

In the information we have obtained in connection with the preparation of our report, there has been little attention given to the subject of distribution of treed land throughout the Province. Much of the data now is not subdivided by counties so precise comparisons are difficult. However, Dendron Resource Surveys Ltd. in its *Prince Edward Island Twenty-Year Forest Development Plan*, at p. 13, acknowledged that "the forested area is distributed throughout the province with somewhat higher concentrations in the Prince and Kings counties." Another reference, in a different context, is found in the same document at pp. 47-8, under the heading "Distribution of Benefits".

> The benefits of the Forest Management Program will be widely distributed throughout the economy of Prince Edward Island. To some extent this is so because there are forest resources in all regions of the Province, with the highest concentration of forest land in the east, the largest forest-related labour force in the centre and the highest percentage of labour force in forestry in the east (Table XVIII).

TABLE XVIII

Forest Area and Labour Force in Forest Base

	Labour Force			Area ('000 ha)	
County Land	Total	Forest Base	District	Total Area	Forest
Prince	18,575	215 (1.25%)	Western	198	87 (43.9%)
Queens	18,385	275 (1.0%)	Central	162	57 (35.2%)
Kings	8,485	170 (2.0%)	Eastern	215	132 (61.2%)

(Source: Statistics Canada and 1981 PEI Forest and Biomass Inventory)

The first observation to be made from this data is that the amount of forested land apparently has increased considerably. In 1963, Raymond, McClellan and Rayburn found a total woodland area of 598,000 acres. The data provided in the Dendron Resource Surveys Ltd. report indicates that by the start of the last decade this aggregate reached 276,000 ha. or 681,996 acres, an increase of some 84,000 acres. Departmental information now suggests a further growth of some 16,000 acres.

The increase in the amount of forested land is accompanied by a change in land ownership patterns. Traditionally, woodlots in the province have been seen as adjuncts to farms and the owners of forested lands were farmers with little vested interest in the goals and objectives of forestry management. As indicated at the outset of this chapter, Raymond, McClellan and Rayburn reported 334,226 acres of Island woodland formed part of the Census farm inventory in 1956. By 1986, Statistics Canada found only 212,797 acres of "unimproved land" on the Census farms of the province; this acreage was comprised of 151,225 acres of "woodland" and 61,572 acres of "other". The conclusion is inescapable: the majority of forested land is no longer owned as part of farms.

Is this increase in forested land proportionately distributed throughout the province? Are forest-based activities spread throughout woodland areas in relation to the size of the forest base in each county? The varying forms in which data is presented makes comparisons difficult. Public perception is that forest land increases have been most pronounced in Kings County, but there are some indicators that the level of forestry activity in the eastern end of the province is not commensurate with its share of the forested land base. Dendron's Table XVIII shows what percentage of each county is forested in relation to the size of the county: it does not show directly what proportion each county contributes to the distribution of forest area in the Province. Computations on the data indicate that the 132,000 ha. of forest land in Kings County represents 47.8% of all forest land in the Province. Only 20.7% of forest land in Prince Edward Island is found in Queen County, while the remaining 31.5% of forest land in the Province is in Prince County. With only one-fifth of all forest land in the Province located in Queens County, the Dendron Report found 41.67% of the labour force based in forestry in the central area. Kings County, which has almost half the province's forested area, has only one quarter (25.75%) of the jobs in this sector. The situation in Prince County demonstrates more equity: with 31.5% of the forest land, Prince County has 32.58% of the jobs. Another, more recent, indicator of possible inequities on a geographical basis is illustrated in the Annual Report for the Department of Energy and Forestry for the year 1987-88. There the "Eastern District", which includes Kings County, reported 114 management plans had been written for woodlot owners in the previous year. "An additional 167 plans were signed, bringing the District's five-year total to 742 plans written and 696 plans signed." On the other hand, the Western District reported 138 new plans, bringing its "five-year management plan total to...745 plans signed." Since a forest base of 132,000 ha. in the Eastern District was so much larger than the 87,000 ha. of the Western District, greater management plan activity would be anticipated in the eastern area. While there may be various reasons that account for such apparent divergences, future assessments of the application of forest programs in the province should take into account the difference ratios in forest land usage among the various geographical areas.

Raymond, McClellan and Rayburn also provided information on the mixture of species found in the province. In a passage of *Land Utilization in Prince Edward Island,* at pp. 58-9, they wrote:

> **Species:** The Forest Classification for Canada places the forests of Prince Edward Island within the Acadian forest region, a region characterized by the intermixture of northern hardwoods and boreal forest types. At the beginning of settlement, the northern hardwoods type predominated, especially on the well drained uplands east of the Malpeque-Bedeque isthmus. Beech, sugar maple and yellow birch were the dominant elements of the hardwood forest, with white pine and hemlock on the excessively drained sites. On the lowlands of western Prince and the patches of poorly drained land scattered throughout Kings, conifers were dominant with white cedar, spruce, fir and tamarack the principal species. Extensive stands of individual species were rare; over the whole Island there was a close relationship between local variations in drainage, soil and slope and the distribution of species.
>
> As a result of two centuries of human occupation, the forests have been greatly altered. As the hardwood forest were cleared, spruce, balsam fir and white birch took their place. Slow to regenerate and afflicted by a variety of diseases, sugar maple, beech, yellow birch and white pine now have a much diminished importance in the Island's woodlots. *Spruce and balsam fir now make up two-thirds of the*

> *estimated volume of merchantable timber on the Island; beech and maple account for only one-sixth of the total. The common practice of clear-cutting timber land has led to the spread of undesirable species such as alder and aspen. In many places productive woodland has been replaced by scrub and brush.*
>
> Table 21
>
> Merchantable timber 1958
>
> (Millions of cubic feet)
>
> | | | | |
> |---|---|---|---|
> | Softwoods Hardwoods Spruce | 57 | Poplar | 6 |
> | Balsam fir | 36 | White birch | 17 |
> | Hemlock | 1 | Maple | 23 |
> | Cedar | 1 | Beech | 2 |
> | White pine | 1 | | |
> | Larch | 4 | | |
> | Total | 100 | Total | 48 |
>
> Total of all species 148 [Emphasis added.]

How does this data compare with today? The answer to that question also proved difficult to evaluate. We have been referred to a great many studies that have been prepared for the Province throughout the past decade. The data, however, is not only fraught with the inconveniences engendered in converting from Imperial units to metric ones, it also aptly illustrates the growing complexity of professional jargon building up around forestry. [For example, the Dendron Resource Surveys Ltd., completed in 1982 for the then Forest Service of the Department of Agriculture and Forestry, indicated a total merchantable volume of 20,933,855 m3, a total timber volume of 33,327,000 m3 and a total biomass reserve of 43,248,760 oven-dried tonnes, with the total timber volume estimate being accurate within 7.8% at the 95% probability level!]

While we examined a number of these studies, we found numerous data base changes. Not only are the geographical areas, once identified by counties, now replaced by the "Eastern", "Central" and "Western" Districts, but tree species are rarely singled out except in hardwood and softwood components. One of the few sources that we have found that might offer some basis for making the comparison was not a study prepared by forestry professionals but the Prince Edward Island Soil Survey (*Soils of Prince Edward Island,* 1988) which is an Agriculture Canada study. At page 16, it noted: "Hemlock and pine have virtually disappeared and many undesirable or weed species have replaced former productive species. Spruce, balsam fir, and white birch now make up more than two-thirds of the estimated volume of merchantable timber on the Island, and beech and maple account for about 15% of the total." [By way of comparison, the data by Raymond, McClellan and Rayburn (using 1958 in their Table XVIII) allocated 74.32% to spruce, balsam fir and white birch and a further 16.89% to beech and maple.] It would appear from this information that the narrow range of species which dominated more than 90% of merchantable timber one-third of a century ago continues to be the pattern.

Other parameters for judging change in land used for forestry support the conclusion that, in spite of the energetic efforts by government, the role of forestry in the commercial domain has not been appreciably altered in the long-term. In 1963 Raymond, McClellan and Rayburn addressed the position of forestry in the provincial economy in these terms:

> Even though forests cover 43 per cent of the total land area of the Island, forestry plays a very minor role in the present-day provincial economy. Since the end of the land clearing period, which was completed by 1900, forestry on the Island has become an adjunct of agriculture. Farm woodlots and abandoned farm land are the sources of supply for the entire production of forest products, chiefly fuelwood, lumber, pulpwood and Christmas trees. The output of wood is obtained from a large number of small producers, most of whom earn the bulk of their income in agriculture. *In 1951 only 363 persons, one per cent of the labor force, were employed in the primary logging and secondary wood products industries according to Census of Canada figures. As a source of farm income, the sale of forest products is very small, being only 2.2 percent of total farm cash income during the 1957-1959 period.* . . . It is clear that in the future, as in the past, the wood production of the Island will come from the farm woodlot; the development of a primary forest industry of any consequence separate from agriculture is highly unlikely.
>
> Prince Edward Island annually produces about 5 per cent of all the wood products harvested in the Maritimes. In the P.E.I. Market Report of Forest Products *the bulk of the estimated production from the Island's woodlands in 1960 was reported as 8 million board feet of saw logs, 72,000 cords of fuelwood, 44,000 cords of pulpwood and 40,000 Christmas trees.* Fuelwood and lumber supply the local market, while pulpwood and Christmas trees are exported, the former chiefly to Europe, the latter to the United States. *In addition, sufficient wood is cut to supply local needs for fence posts, rails, stakes and utility poles.*
>
> Establishments engaged in the processing of wood are small and widely scattered. For the most part, their distribution reflects the distribution of woodland, with a greater concentration in the poor farming areas. The Island's numerous sawmills are small and widely distributed. Other plants, often only one- or two-man operations, supply the local demand for lobster boats, lobster traps, boxes and crates. Construction of boats larger than those needed in the lobster fishery is now carried on only at Alberton. [Emphasis added.]

How does this compare today? According to a *Guardian* news story of December 18, 1989, the Minister of Energy and Forestry had indicated, "[d]irectly or indirectly, P.E.I.'s forest industry employs over 650 people." While this is almost double the number of people attributed to the industry in the preceding passage, the total expansion in size of today's labour force suggests forestry, as a labour component, is now in about the same position as it was about 40 years ago!

Dendron Resource Surveys Ltd. reported an annual production average, for the period 1981-1985, of 5,600 Christmas trees less than 15% of the volume reported in 1960!

Table 1 provides statistics on the Provincial Gross Domestic Product for P.E.I., as found in the Province of Prince Edward Island Sixteenth Annual Statistical Review, March 1990.

TABLE 1

PROVINCIAL GROSS DOMESTIC PRODUCT AT FACTOR COST FOR SELECTED INDUSTRIES ($ MILLIONS)

PRINCE EDWARD ISLAND 1980-1984

	1980	1981	1982	1983	1984
Business Sector					
Agriculture Related Services	73.4	141.9	89.5	91.2	121.5
Logging & Forestry Industries	0.0	0.0	0.1	0.2	0.3
Non-Business Sector					
Forestry Services Industry	1.6	1.8	1.6	1.2	1.2
Total Gross Domestic Product at Factor Cost	793.0	939.0	974.0	1,076.0	1,199.0

The information in Table 1 demonstrates that, since Raymond, McClellan and Rayburn reported on their findings, the traditional ratios between agriculture and forestry have been altered only to the extent that the wide gulf between them has increased even further.

Data on current forest production, provided in metric units in Table 45 at page 56 of the Sixteenth Annual Statistical Review, is contained in Table 2.

TABLE 2

ESTIMATES OF PRIMARY FOREST PRODUCTION

PRINCE EDWARD ISLAND

CUBIC METRES (OOO'S)

	1985	1986	1987	1988	1989
Logs and Bolts (1)	85	114	86	130	112
Pulpwood	43	46	56	65	66
Other Round Wood	0	0	28	28	28
Total Industrial Wood	128	160	169	223	206
Fuelwood	287	316	310	310	310
Fuel Chips	0	0	17	28	29
TOTAL PRODUCTION	415	476	496	561	545

(1) Includes some pulpwood

Source: Statistics Canada Catalogue 25-202, Canadian Forestry Statistics (1984-1986). P.E.I. Department of Energy and Forestry, Forestry Division (1987-1988).

Raymond, McClellan and Rayburn cited production figures of 8 million board feet of sawlots in 1960. This would amount to some 18,877 cubic meters (using a conversion rate of 1,000 feet board measure being equivalent to 2.3597 cubic metres); this quantity is a fraction of the production of logs and bolts for any of the five years shown in Table 2. Our benchmark source also provided production data of 44,000 cords of pulpwood and 72,000 cords of fuelwood. By comparison, this 1960 data would convert to 159,478 cubic meters of pulpwood and 260,964 cubic meters of fuelwood (using a conversion rate of one cord being equivalent to 3.6245 cubic meters). It would appear that the pulpwood produced now is significantly less than what was harvested forty years ago, but the amount of fuelwood is in excess of what it once was.

Although there are numerous gauges that might be used to compare and contrast the present use of our woodland with some time in the past in order to provide a "then" and "now" picture, one common theme seems to emerge. *All the activity that has surrounded forestry during the years of the Comprehensive Development Plan and the commercial thrust which now occupies the central stage in the Department of Energy and Forestry, to date, has revived forestry in the provincial economy, at best, to the stage it was at a generation ago.*

It is apparent that the forested land base continues to increase, to the point where now almost half the total of all land in the province is involved. At the same time, the number of landowners of woodlots has increased. The Department of Energy and Forestry has identified some 20,000 landowners with woodlots, almost triple the number of owners cited by the 1973 Royal Commission. To put those numbers into a wider perspective, we note that Frank Oberle in "The Green Ghetto" writes that "an exciting model of effective small woodlot operations is available to us in the United States, where *48,000 landowners* participate in the American Tree Farm Program, farming about *84 million acres* [*sic*] (34 million hectares)". [Emphasis added] Oberle goes on to point out that the American program involves *10,000 foresters* (a ratio of foresters to land size that is very much less than European countries, where one forester for every 300 to 400 hectares [750-1,000 acres] may be found.) Clearly, our level of forest activity is not high by foreign standards but the number of woodlots and their owners, together with the small size of many lots, poses a unique difficulty.

The large number of property owners with forested land in the province has been identified repeatedly as the initial problem in providing a viable program for commercial usage of trees on the Island. While the province has long recognized this and has acquired considerable Crown land acreage, particularly through the L.D.C. landbank, we understand that no concerted attempt has been made to consolidate holdings to provide larger blocks of forested land. From what we have been able to ascertain, the planning and direction in relation to forestry has centered on the silviculture and economics aspects without addressing the land tenure itself. While the 1973 Royal Commission Report rejected a major purchase program, it did suggest a limited amount of effort be directed to land assembly. The history of the L.D.C. landbank demonstrates that title to more than one-eighth of all land in the province has flowed through the control of the Crown in the last two decades, but from all accounts, this opportunity to undertake a program to consolidate land parcels for forested usage went unheeded.

With some 40,000 acres of land under title to the Crown for forestry usage, we would suggest that it is not too late to implement policies aimed at some assembly of larger blocks of forested land over time. We would expect that this exercise would include Class II and Class III lands in certain areas, particularly where agricultural activities have been largely vacated. We understand there have been instances in the past where land has been planted with trees, only to have these trees plowed under whenever an individual has indicated a desire to farm such land. While this practice may have been restricted to isolated occurrences, we are of the view that once land has been developed for forestry usage, it should be retained for forestry until trees are ready to be harvested. A land assembly policy, combined with a comprehensive land use plan for the province that serves to identify tracts of land best suited for retention primarily or exclusively for forestry usages would tackle the underlying problem of forestry land usage at its foundations.

Accordingly, we recommend

- **THAT one of the components of a comprehensive land use plan include the identification of lands best retained for forestry usages.**
- **THAT the Crown adopt a policy of assembly of larger blocks of forested land over time.**
- **THAT in some areas, vacant farmland be dedicated for forest usage, even if the soil classification is Class II or Class III, and, be preserved for this usage for an extended number of years.**

The *Forest Management Act,* R.S.P.E.I. 1988, Cap. F14, requires the Minister of Energy and Forestry to prepare and publicly review a forest policy. It also requires the Minister to monitor forest growth and to provide once each decade, beginning in 1992, a State of the Forest Report for the Lieutenant-Governor-in-Council. Section 6(1) of the legislation specifies the matters which are to be included in this Report. These are as follows:

> (a) an inventory of the forest in the province identifying the area of the forest by cover type, the volume of forest products available in the forest, the age distribution of the forest, and an estimate of the growth of the by-product type that the forest can sustain with and without management;
>
> (b) a summary of the forest management activities for both Crown forest lands and private land implemented during each year of the ten-year reporting period;
>
> (c) an estimate of the wood supply shortfalls or surpluses based on projections of forest growth and the demand for forest products;
>
> (d) an outline of programs proposed to manage the forest in the next reporting period; and
>
> (e) such other information as may be prescribed by regulation.

No regulations have been enacted to increase the information required in this State of the Forest Report.

We have been given no explanation as to why this Report is not, by legislation, a public document. Indeed, the provision to prepare this Report for the Lieutenant-Governor-in-Council seems to be at odds with the requirement that the Forest Policy must be publicly reviewed. Should the State of the Forest Report present information that points to the feasibility of a revised Forest Policy, the public would need access to the State of the Forest Report to assess any revisions to the Forest Policy.

The *Forest Management Act* makes numerous references to regulatory powers. With the exception of the appointment of a Forest Improvement Advisory Committee in 1989, no regulations have been enacted. Departmental officials have developed standards used in management plans and implemented these as conditions of funding activities but they have not put in place the regulatory provisions that would enable them to administer or enforce these standards effectively. Another example of regulatory deficiencies is provided in relation to departmental activities on Dutch elm disease, where regulatory power has not been used under the *Forest Management Act* and it is doubtful whether municipalities have the authority to enact the bylaws needed for effective control measures.

Government has invested a considerable amount of time and money in exploring publicly-held views on the forestry, the potential methodologies to manage the forests, and the review of forestry legislation to support the need for management. The findings indicate that it is not only the landowner who feels a very close attachment to the forest. The trees on the owner's land affect the wind speed, soil erosion, snow deposition and even the retention of water in neighbours' soil. Although much of the forest is tucked away on back roads and at the back of farms, the forest and even individual trees radically alter the way in which the landscape is viewed. They can screen urban developments, they can create a cozy nook, or they can be an eyesore which detracts from the view. The wildlife that use the forest are considered a public resource. The streams that meander through wooded areas are protected by the overhanging trees and many people consider the land along these streams a public resource even though the majority of it is owned by private landowners. Tourism operators consider the forest an essential component of the landscape. Most Islanders, whether they own forest or not, view it as theirs for a wide variety of reasons.

Up until this time in our history, the stewardship of our forest resources has rested with the landowner. The Forest Policy, on which the *Forest Management Act* was based, outlines a number of principles that Government espoused. Among these was the principle that: "[t]he full exercise of rights and obligations of private land owners must be preserved unless these are clearly demonstrated to be contrary to the public interest". What are the *obligations* of the private landowners? Aside from the obligation to pay property taxes, it would appear there are *no* obligations, in general, imposed upon private landowners under the *Forest Management Act*; limited obligations are imposed only on owners of select properties, such as those bounding scenic heritage roads.

One of our terms of reference calls for us to inquire into and report on "all existing legislation pertaining to land use, particularly that relating to ownership by non-residents". The *Forest Management Act* pertains to land used for forestry purposes and therefore has effects in relation to almost half the land area in the province. The legislation is applicable regardless of whether the land is owned by residents or nonresidents, but many of the provisions in the legislation are applicable only to land owned by the Crown.

It would seem that this legislation adopts a schizophrenic approach to individual rights. The *Act* enables the Minister to "encourage" the management of private forest land but it does not put any responsibility on the individual landowners to participate in any program of land management or to impose principles of land stewardship on private landowners. Yet such regard for individual rights is not consistent with other provisions in the *Act*. When forested land owned by the Crown is involved, the *Act* grants powers of seizure, normally reserved for peace officers, to a wide assortment of departmental officials and provides Crown immunity in at least five separate provisions of the legislation. The Crown is given ample opportunity to retain seized [personal] property for a lengthy period of time when a prosecution has failed or when no prosecution has been undertaken. As a result, an individual, accused of removing a Christmas tree or firewood from Crown land, for example, can have both tree and vehicle seized by a forester or forestry technician. If no prosecution has been initiated within *six* months, "the property seized shall be returned, *within a reasonable time"* [Section 12(8) - emphasis added] and any *equipment* seized shall be returned "at the expiry of six and a half months", under the provisions of Section 12(11). There is no provision requiring the return of the vehicle. Both the Crown and its employees can claim protection from civil liability under the legislation.

Compare the rights of the individual accused of an offence on Crown land by forestry personnel with the rights accorded the individual owning forested land. The landowner with several acres of dead trees posing a fire or safety hazard, not to mention the detraction to the visual aesthetics of the landscape, can continue to neglect the land with impunity. The landowner whose trees are diseased can ignore the problem. The landowner in possession of rare or beautiful trees can destroy them with reckless abandon. It would appear that the *Forest Management Act* has not adopted a balanced approach in dealing with difficult issues.

We were presented with one graphic illustration of irresponsible behaviour by a private landowner from an example recounted by departmental officials. Forestry is a geography-specific exercise so it is important that quality tree stock for provincial usage be derived from superior Island trees. To meet this need, the department searches for superior trees within the province and, whenever one is found, the landowner is offered a small cash payment in return for allowing departmental officials the right to obtain seed from the tree during its lifetime. A prime specimen was located for a particular species and the owner was approached and offered the usual deal. The property owner indicated a wish to consider the matter over night so officials returned the following day for his decision, only to find the property owner had cut down the tree in the interim!

The province and the general public must face the fact that our forested lands, whether as a commercial asset or a natural resource, are too vital to be squandered. More obligations are required on today's owners if future generations are to enjoy what we have now, no matter how inferior this is to what we once had. While much of the world bemoans the destruction of the Amazon rain forest and the old growth trees of the Pacific coast, Prince Edward Island has its own problems. Central among these is the fire and safety hazards - and the landscape deterioration - already evident in our wooded areas. It is a problem destined to get worse, likely to affect more than 10% of our wooded areas over the next two decades - unless property owners are presented with obligations and responsibilities.

Until now, government has relied on providing incentives to encourage landowners to adopt better stewardship practices. We have been advised of abuses of these incentives, but we do not know to what extent these are purely isolated examples. Typical of such absues are landowners participating in programs under the guise of enhancing woodland but, in reality, utilizing the programs as a public subsidy for land development for residential purposes, particularly for cottage lot subdivision.

The time has come when a more pro-active approach to land stewardship must be adopted. To do this, we are of the view that a variety of tools must be used to supplement the incentives program now being offered. While the easiest solution would lie in greater regulatory measures, we feel it imperative to recognize that legislative provisions are only effective if adequately enforced. Consequently, we are of the view that other answers must be available to act in concert with mandated objectives.

We would suggest that government should couple its financial incentives with more public education. Public education, centered on the benefits of forest enhancement and land stewardship, should not hesitate to point out obligations that the law has traditionally imposed on property owners under the principles of common law. It would appear that many Islanders are of the mistaken belief that they can neglect their land with impunity and any adverse consequences that flow from this neglect will be excused as a natural occurrence. This is not the position taken by the courts and the message needs to be brought to the attention of landowners.

A fitting example, among hundreds that could be cited, is that provided in a recent British Columbia case of *Hayes v. Davis.* The plaintiffs were sufficiently concerned about potential dangers from trees on a neighbour's property that they asked him to remove the cluster of seven or eight trees near their property line. The defendant said he did not have the $400 it would cost to remove the trees. Subsequently, two of the trees fell on one of the plaintiffs during a high wind storm. The court did not accept the defendant's argument that the trees degenerated through a natural process and therefore he had no responsibility as a landowner. "*Gone is the age when landowners or occupiers could with impunity ignore the hazards of nature on their property of which they were aware, or ought to have been aware, to the peril of their neighbours or other parties outside the property*", Judge Nicholas Drossos said, awarding the injured woman more than $65,000 in damages, plus her legal costs and interest. [Emphasis added.] The message is one that must be delivered to the landowners of this province.

As one of the possible vehicles for delivering this message, we would suggest a publicity campaign centered on the theme, "Are you part of the problem?" This theme should emphasize public concern about the environment, coupled with a number of particular forestry problems: the prevalence of dead or dying trees, the need to replace inferior species (such as alders) or deformed trees with more quality stock, the need to thin crowded trees etc. Ideally, forest management plans for these properties would be the optimum goal. But with 17,000-18,000 woodlot owners not yet involved in plans, we think it more realistic to target such a campaign essentially at promoting awareness and spurring some minimal level of activity on the part of these owners.

Coupled with such measures, we would suggest that the province examine its property tax system in relation to incentive rates for land dedicated to long-term forestry use for which management plans have been put in place. The Province of Ontario, for example, has utilized such a program which bears resemblance to the type of tax incentives now widely accepted in relation to agricultural lands.

Another valuable thrust in promoting land stewardship is the creation of a Provincial Forest. The *Forest Management Act* already makes provision for a Provincial Forest which it defines as "an area of Crown forest land designated as such under the regulations". It is unclear how a Provincial Forest would differ from Crown lands used for forestry purposes. We would suggest that the concept of a Provincial Forest should be developed and implemented. Further, whether through the Provincial Forest designation or otherwise, we are of the view that the Crown should dedicate more model tree plots than the present demonstration woodlots. Such plots should include a variety of non-commercial species of trees.

Accordingly, we recommend

- **THAT the *Forest Management Act* be amended to require public review of the State of the Forest Report.**
- **THAT the regulations required for effective administration and enforcement of the *Forest Management Act* and the standards associated with forestry incentive programs be put in place.**
- **THAT government adopt a more balanced approach to individual rights and obligations under the *Forest Management Act* with government adopting a more pro-active approach towards land stewardship in relation to woodlot owners.**
- **THAT there be firmer policies in providing forestry incentives to prevent abuses and ensure long-term stewardship of land that has benefitted from public funds.**
- **THAT government provide more public education on land stewardship in relation to forested land, including the obligations imposed by the common law upon property owners.**
- **THAT incentives available through property tax rates for land dedicated to long-term forestry use under management plans be examined.**
- **THAT much more Crown land be dedicated to model tree plots, including plots that include a variety of non-commercial species.**

Two decades have passed since the start of the Comprehensive Development Plan, when it was apparent that nearly 50% of the province's land base was not being effectively managed. In that interval - a brief time span in the life of a tree - government has undergone at least two broad shifts in its forestry policies. We would suggest that this pattern of short-term "fiddling around", particularly where it is aimed at encompassing the totality of woodlands in the province, is very much contrary to the optimum strategy that should be rooted in a more long-range, stable game plan.

Central to such changes have been two major alterations, the first of which was the decision to abandon efforts to revitalize the Acadian forest within the province. We understand that this change was made as a result of the recommendation from forestry consultants, coupled with what were judged as "poor results" from the hardwood plantings inherent in the Acadian forest renewal effort. *This altered direction in the forestry program was brought to our attention again and again at our public hearings. Virtually all* *presentations that made mention of trees were critical of the exclusive priority given to softwoods and/or the abandonment of hardwoods in current government forestry practices.*

This criticism was also brought to our attention in a press report carried in the *Guardian* of November 7, 1989. Under the heading "Lack of 'Vision' Hurts Forestry: Potential Not Being Reached", Stephen Sharratt of the newspaper's Montague Bureau gave an account of an address by Dr. Stephen Manley, a former provincial employee and forestry specialist, who was speaking in Montague to a meeting of woodlot owners and environmentalists. Mr. Sharratt's account of this address stated:

> Maritime forests only produce about 25 per cent of their potential these days because management practices have ignored natural succession and created an impoverished ecosystem, says a former P.E.I. government official.
>
> "It's not deliberate mismanagement, but it's a serious error...no one wants to take a chance on a vision," Dr. Stephen Manley said during an address to a packed public meeting here focusing on the desecration of the Acadian forests across the Maritimes.
>
> "Because of the profile of our current forest systems. . .we probably contribute more to (regional) acidification than acid rain," said the former director of operations with the P.E.I. Department of Forestry. . . .
>
> An outspoken critic against the continued practice of government softwood regeneration programs, Dr. Manley said the actual Maritime harvest has dwindled to 15 cords per acre despite a climate with the potential to produce 50 to 80 cords per acre. He said the healthy rich biomass generated by hardwood growth has declined substantially and is being replaced with the acidic biomass of conifers which changes soil structure.
>
> "So little is left of the original Acadian forest and the rich and resilient eco-system it supports that you can hardly identify it anymore," he said during the meeting sponsored by the Eastern Woodlands Association and the Environmental Coalition of P.E.I.
>
> Now with the University College of Cape Breton, the forestry biologist said continued practices of preventing natural succession (the regrowth of hardwoods) through herbicide spraying and replanting with conifers has drastically changed the forest system. . . .
>
> "These practices have put the condition of the forest in a very tenuous situation and generates all kinds of problems for management."
>
> Dr. Manley said the original Acadian forests was a balanced system including sugar maple, hemlock, beech, ash, red spruce, white pine and oak and at one time made up 95 percent of the forest inventory. Today, however, early succession trees like white spruce, balsam fir (*sic*) and red maple dominate, creating a biological system, he said, that can't even support a "salamander".
>
> The theories of the candid academic didn't go unchallenged and some foresters and mill operators argued for the economic value of softwoods. However, Dr. Manley suggested the saw log industry is virtually dead and policies of clear cutting

> hardwood and replanting softwood are detrimental to future economic growth in the forest industry. He said current forestry practices are responsible for turning Maritime forest earth into soil compatible with the Arctic. . . .
>
> "Instead of allowing the natural succession of the forest to run its course, we encourage the impoverishment of the ecosystem when we try to kill off hardwood regeneration with herbicides so we can replant softwood," he challenged during a lively presentation.
>
> Dr. Manley said the condition of beech and white pine are a "national disgrace" and to genetically restructure some species back to original strength will require government funding.
>
> But the biologist maintained there was a commercial leaning to his theory, and maintained the current under-valued condition of Maritime forests can only prompt industry to encourage diversity for future profit.
>
> "Unfortunately we're not tree people," he said, "we don't take our forests seriously. . .we're urban people in a forested nation and there's only a few gnomes out there trying to protect it."

It would appear that there are two schools of thought among professionals as to the feasibility of attempting to revitalize the Acadian forest. We are of the view that the province made an unfortunate choice when it opted to place all its "eggs in one basket", so to speak, and abandoned one direction on a province-wide basis after what seems to us to be a short-term effort and an exclusively commercial-oriented set of standards.

A second change of direction evolved from the decision to discontinue the plan to replicate the Acadian forest throughout the province. This was the adoption of the current policy that emphasizes forestry as an adjunct of the energy sector. The marriage of the energy and forestry portfolios has resulted in a public perception which, we believe, is all too true: the province is engaged in growing trees almost solely to burn them!

The data we have cited earlier supports the conclusion observed in the *Guardian* news item of December 18, 1989: "[f]irewood is P.E.I.'s largest and most important forest crop." *Not only has firewood risen in proportion to other uses of forest products, it now outstrips the volume of production of some four decades ago - at a time when lack of rural electrification guaranteed wood fuel consumption a virtual monopoly in 15% of Island homes,* while traditional lifestyles combined with economic factors ensured wood was still the most common choice of heating fuel for rural households.

If firewood is the largest and most important crop, why is so much emphasis being placed on softwood, when hardwood is preferred by many users and is more the economical fuel? An emphasis placed on utilizing softwood for energy needs is understandable from the perspective of the over-abundance of old field white spruce at the present time - combined with the high cost of alternative fuels. However, with so many forestry problems derived from this species of trees, it seems to defy logic to place so much reliance on white spruce as the species of the future. Yet the data on plantings indicates white spruce is in a preferred position in relation to almost all other species in the Department.

We appreciate the multitude of difficulties facing forestry personnel in the selection of feasible options. Nevertheless, we are of the view that the department must re-evaluate, to some extent, the emphasis it has placed on its forestry/energy alliance.

Accordingly, we recommend

- **THAT government must continue and intensify its efforts on forest rehabilitation but that its policies must be combined with more recognition for the non-commercial benefits of trees.**
- **THAT there be greater emphasis on hardwood management in the Province, particularly in the provision of hardwood species for plantations.**

There has been a great deal of attention paid to the replanting of trees in the province over the past two decades. Many of these early plantations should now be at the point where thinning of these trees is desirable. Any automobile drive through the wooded areas of the province shows numerous forested areas where trees need to be thinned. Some of these are young, even-aged growth areas - a few signed to indicate connections with forestry projects - but thinning of trees on some parcels is long overdue.

Without detailed examination, it is difficult to determine whether these problems are occuring on Crown lands or private lands. However, we feel the province needs to take more aggressive steps to ensure that parcels of land which have had the benefit of plantings should be appropriately thinned as the need arises.

Wooded areas adjacent to roadsides and hedgerows demonstrate neglect that constitute a blight on the landscape. Dead or dying trees, overcrowded young trees, clear-cutting along roadways are consistent features that detract from visual aesthetics. During our visit to other jurisdictions, we were particularly impressed with the roadside treatment of wooded lands along many New England roadways. There, it was possible to "see into" the forest. A buffer strip of the trees adjacent to roads were thinned and lower branches were trimmed with a very pleasing result. The contrast between "working" and neglected landscapes of this type can be easily seen along many Island roads. Route 4 between Montague and Murray River is an excellent example. In a brief stretch of highway there are several places where careful attention to trees makes it possible to see into the woods. At the other extreme, this same stretch of highway provides ample illustration of the deterioration caused to the landscape when a massive number of trees are left to overcrowd limited space and where wholesale death of forested areas along the roadway are a visual blight.

We are of the view that the province must place a higher priority on the aesthetics of woodland areas, particularly those adjacent to well-travelled, highly visible locales. To accomplish this, we would suggest a two-pronged campaign involving the organization of a series of "woodlot days" in various sectors of the province. These would be aimed at removing dead trees along roadways, in hedgerows and in other highly visible places. While there is environmental benefit in leaving the felled trees to rot, and this may be feasible to some extent, a chipper should be brought to each locale as part of the campaign. In other words, the program would be a form of roadside clean-up, but it would be aimed at removing dead or dying trees along areas visible from highways. While priority should be given to the major roads and scenic drives, attention must also be directed to other areas where such problems are particularly acute. In tandem with this project, the Department should select areas for thinning of trees adjacent to roadways. While we are not suggesting the professional aspects of forestry should be ignored in these exercises, the primary goals should be enhancement of the visual aesthetics, coupled with the removal of potential hazards.

Accordingly, we recommend

- **THAT government spearhead a program, extended over several years, for dead tree removals, particularly in areas adjacent to roads, in hedgerows and in other areas of high visibility.**

The Department's position in relation to trees is based on a professional perspective. We are of the opinion that this viewpoint must give way to other objectives in a number of instances. Chief among these is its position in relation to clear-cutting. We do not accept the Department's position in regard to clear-cutting adjacent to streams because of the windfall risk attached to old field white spruce.

In *The Trees Around Us: A Manual of Good Forest Practice for Nova Scotia,* a number of factors were outlined for assessing stands of trees, including the criteria to rate the estimated windfirmness of the stand. The passage suggests that windfall risk depends on a variety of circumstances. A below average windfall risk is cited in respect to valley bottoms, except where these are parallel to the direction of prevailing winds. All lower, and gentle middle, north and east facing slopes have a below average risk of windfall. So, too, do all lower, and gentle middle, south and west facing slopes that are protected from the wind by considerably higher ground not far to windward. While there is an above average windfall risk for valley bottoms parallel to the direction of prevailing winds, for gentle middle south and southwest slopes not protected to the windward; for moderate to steep middle, and all upper north and east facing slopes; and for moderate to steep middle south and southwest facing slopes, many of these categories are the very areas likely to suffer serious soil erosion from clear-cutting. Much the same may be said in relation to the very high windfall risks associated with ridgetops, saddles in ridges, moderate to steep middle south and southwest facing slopes not protected to the windward, and all upper south and southwest facing slopes. This manual goes on to state:

> The risk of windfall in these situations is increased at least one category by such factors as poor drainage, shallow soils, defective roots and boles, overly dense stands, or even-aged stands of spruce and/or fir. Conversely, the risk of windfall is reduced if the stand is somewhat open-grown, composed of young, vigorous, sound trees and contains at least 20 hardwood trees per acre (50 per hectare). All hardwood stands are considered to have below average risk. All situations become very high risk if exposed to special topographic conditions, such as gaps or saddles to the windward in ridges at higher elevations. These can funnel winds into the area.

On this basis, we have concluded that the windfall risk associated with old field white spruce in areas adjacent to waterways is a variable risk which must be balanced with a number of other considerations. We are of the view that stewardship of the land requires the preservation of greenbelts in such areas and the prohibition of clear-cutting.

Under the provisions of Section 19 of the *Forest Management Act*, "[t]he Minister may place such restrictions on the harvesting or extraction of trees within twenty metres of a body of water or within forty metres on either side of the midline of a designated scenic heritage road, as may be prescribed by regulation".

The Trees Around Us details the standards adopted in Nova Scotia at the time of its publication (1980). At page 71, the manual stated:

> *Clearcutting should not be undertaken within 50 feet (15 metres) of a lake, stream or watercourse.* Partial cutting is recommended for these borders, and logging machinery should be kept out. The result will maintain and improve the wildlife habitat, quality of water and scenic values.
>
> *Cutting is not permitted within 100 feet (30 metres) of any lake, river or highway designated by the Governor in Council without permission from the Forest Practices Improvement Board.* If you plant to cut near a river, lake or highway, get in touch with your local Board to learn if the site is designated as protected. [Emphasis added.]

Coupled with a prohibition on clear-cutting along all waterways in the province, we are of the view that clear-cutting along roadways must be restricted far more extensively than Section 19 of the *Forest Management Act* now purports to prescribe. Preferable standards would require commercial clearcutting operations to leave a buffer zone that may be subjected only to selective cuts along roadways. This is particularly important on routes designated as part of the scenic drives, along other heavily-travelled roadways, and along roads that are otherwise intrinsically linked with key tourist development.

Accordingly, we recommend

- **THAT there be prohibitions against clear-cutting along all waterways in the province and enhanced restrictions against clear-cutting along roadways.**

Although the Department of Energy and Forestry has indicated an involvement in a great many of the more non-commercial aspects of forestry, the public perception is that these features are being neglected. To some extent, the public is justified in this belief. As with many governmental activities, there is often a tendency to "deliver" a program or a service and, once the initial flurry of activity and publicity has passed, nothing more done to remind the public.

Several examples surface from the forestry perspective. While the department has indicated a program is in place to provide assistance to community-based groups to undertake plantings, there is no mention of this in the Bunbury Nursery Garden Centre catalogue - a logical place, in our view, to mention such a program. Earlier efforts to generate public awareness on wildfire risks have come and gone; these should be revived. A recent inspection by one of our Commissioners indicates the management of Royalty Oaks, once a priority item, is now a matter that needs renewed attention. But what may be the most glaring deficiency in the non-commercial aspects of forestry, in our view, is the gap in programming in relation to agriculture.

Even though much of the forested area is no longer an adjunct of the farm, a sizeable fraction still remains within the census farm domain. The need for revitalization of hedgerows is a necessity, as we have underlined in our consideration on soil erosion. It is our view that this important aspect of forestry is not being afforded the attention it requires and we were not convinced that the department's future plans give this matter the priority it deserves. Moreover, we are of the view the Department must concern itself more with other forestry applications in the agricultural context, encouraging good forest management among farmers who view woodlots as a source of lumber for barns and storage buildings, of materials for fence posts and so forth. These directions must be augmented by efforts to emphasize the importance of trees as a necessary agricultural supplement - a natural tool to prevent soil erosion, a protection for water supplies, an aid in solving drainage problems.

At the outset, we indicated our preference in naming this chapter "trees", rather than "forests" or "woodland". We are of the view that the forestry component with its emphasis on silviculture and economics, has overshadowed the value of trees. The focus on forestry has meant that trees themselves have been placed in a minor role!

Almost every property owner in the province is capable of being the owner of one or more trees. Government data points to the difficulties of forestry because there are 20,000 "woodlot" owners. Certainly this poses special challenges for a commercial sector aimed at the financial worth of dead trees. But is overlooks the majority of property owners and undervalues the contribution of trees. Benefits from living trees cannot be calculated in hard-core economic data but the intangible benefits have long been recorded.

Trees prevent soil erosion caused by either wind or water. They provide shelterbelts that reduce energy costs of heating homes in winter and their shade is a comfort and natural coolant in summer. Their capacity for soaking up water aids in solving drainage problems. Trees add oxygen to the air, provide a home for wildlife, keep our streams and waterways intact. They enrich our soils with naturally-produced nutrients. Fruit trees add to our food supply (and here we are reminded that the orchard that was once a standard adjunct to the typical family farm in the province has all but disappeared).

Besides all these practical, environmental uses for living trees, there are numerous aesthetic values. A landscape without trees can have a beauty of its own, but it is a vista of barren desolation. Much of the "shoulder season" tourism is built on the visual feasts of spring blossoms and autumn foliage. Many recreational pursuits are enhanced by the presence of trees: a golf course without trees would be almost unthinkable, while walking, jogging or cycling are among those sports often rendered more pleasurable because trees have been one of the essential components of the setting. Trees hide the flaws and enhance the assets of our built structures.

None of these benefits, however are factored into the economic statistics that have been given such prominence in today's society. However, from time to time, there have been instances where dollar values have been fixed to demonstrate the worth of individual trees in their living state. A recent American news item in a publication for residential home owners provides an illustration. "What's Tree Worth?" asked *Home Owner* in September of 1989. To answer its own question, the article stated:

> A stand of tall, graceful trees can add seemingly priceless beauty to a home, but according to the International Society of Arboriculture, you can put dollar signs on your maples and oaks. This group has developed a formula for valuing any tree with a trunk diameter of over 13 inches at a height of 4 1/2 feet. A tree with a 20-inch diameter truck, for example, could be worth up to $8,478, based on a value of $27 per square inch of truck cross-section. Different species, however, are worth less than others.
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> You may love your Siberian elm, for example, but the arborists give it only a fraction of the value of an oak. If all this sounds like calculation overkill, you can use a simpler guideline from the U.S. Forest Service: *A well-treed lot can add up to 27 percent to a home's value*. But, says the service, too many trees can cut out sunlight and be a maintenance burden. It recommends no more than about 30 trees for a half-acre lot. [Emphasis added.]

The judicial system has not been shy about affixing financial worth to trees. A decision of the British Columbia Supreme Court in 1989 granted $60,000 in general damages and $26,000 in punitive damages to the plaintiff whose neighbour axed thirteen fir trees. A second case in the same jurisdiction, decided in 1990, began when a developer surreptitiously removed trees from neighbouring properties to improve the waterfront view and thereby enhance the profit margin on the selling price for his own lands by some $60,500. Mr. Justice Shaw was not amused and assessed general damages of $33,000 and added $100,000 in punitive damages. The court held that "the cutting of the trees was a blatant destruction of the amenities of the neighbouring property owners". It would appear that trees can have an economic value as an "amenity" for a property far in excess of their worth as part of the commercial forestry sector.

A reference to the catalogue provided by the Bunbury Nursery gives some indication of the financial worth of some trees at the start of their life cycle. It's 1989 listings included some 19 species and, with the sub-species of each, there were 45 varieties from which to choose. Only Butternut and Eastern Black Walnut were available at a price of less than $10. A globe maple, at $74.95 per tree, was the most expensive. To plant 30 trees on a half-acre lot (the maximum suggested in the abovementioned quotation) would cost in excess of $1,000, using the Island's official red oaks - almost $2,000 if the buyer selected these in the 250 cm. height (about 8 feet).

The current focus on forestry is married to its energy component. We do not wish to say that this thrust is all wrong but we feel that the scope is too narrow. The forestry and energy mix is incompatible with tourism and with agricultural needs in relation to trees. Enhancement of our forestry resources centered on energy usage is understating long-term economic growth; there may be more "value added" by putting more emphasis on the importance of trees in relation to the landscape.

How can government effect this? Throughout the ages, governments have instituted numerous imaginative schemes to emphasize the importance of trees and encourage property owners to plant more of them for the generations to come. A Berlin edict in the year 1685 required engaged couples to plant 6 fruit trees and 6 oak trees before receiving their marriage benediction! We are not suggesting anything this creative. But it is still far more environmentally beneficial to have the traditional tree planting ceremonies rather than ribbon cuttings to mark special events.

We are of the view that there are a number of measures, each one a small but important step in this direction. Government can increase tree planting at its own facilities. Sites used for government institutions should preserve trees already there at the outset of construction. A single line of hardwood trees planted on either side of a stretch of road is an investment in creating a new landscape for tomorrow - and a project of this nature is one which the province should undertake on a smallscale but annual basis, if only to give the importance of trees a higher public profile.

Many ventures of this type require effort from municipalities and community-based groups. Some, such as the Rural Beautification Society, have been active in this area for years and the province's non-commercial forestry sector owes much to their largely unsung efforts. According to the Annual Report for the Department of Energy and Forestry for 1987-1988, "[t]he Landscape Assistance Grant Program approved 16 projects and provided approximately $5,000 in grants". With expenditures of almost $4.5 million in the budget for the Forestry Branch, we are of the view that this program should be enriched and more municipal and community groups should be urged to participate.

Accordingly, we recommend

- **THAT forestry policies allocate a greater priority to those components that operate as an adjunct to agriculture, including more attention to the preservation, enhancement and management of hedgerows and other shelter belts.**
- **THAT the province, in conjunction with municipalities and community groups, develop and implement imaginative schemes to prompt more emphasis on the non-commercial aspects of forestry, including the planting of hardwood belts along roadways, the use of more trees in the landscaping of public buildings and in the symbols used to mark special events.**
- **THAT more funding and publicity be provided to the Landscape Assistance Grant Program with municipal and community groups being used to participate on a wider basis.**

Chapter 21

WATER AND SEWAGE

"Water, water, everywhere,
Nor any drop to drink".

- Samuel Taylor Coleridge
(1772 - 1834)

These immortal lines of desperation appear in the famous rhyme of "The Ancient Mariner", a poetic tale in part on the miseries of a seaman adrift in the ocean without drinking water. The agonies he faced are inherent in the global statistics of today. Reviewing a number of environmental issues in his column in *MacLeans* magazine in October 16, 1989, Charles Gordon claimed that: "Eighty countries are experiencing water shortages. A Canadian family with four shower-taking children uses more water in its first hour of one day than the average family in Bangladesh uses in a month." He went on to point out that "[b]etween 1940 and 1980, the world's water use doubled. It is expected to double again by the year 2000." While we can neither confirm nor deny the precision of this data, it is quite representative of the alarms being sounded by many sources in regards to the availability of water in a large number of jurisdictions and the needs that must be met in the future.

Even where quality and/or quantity of water is not a problem, many jurisdictions are faced with serious difficulties inherent in the management of this resource. This point was made again and again in *The Management of Water Resources: Proceedings of an International Seminar*, a publication resulting from a conference that the Institute of Public Administration of Canada hosted in Harrison Hot Springs, British Columbia, in 1985. Central to the difficulties was the widespread practice of having a multitude of participants, each with some authority in the management of a resource that flowed without respect to such territorial or functional divisions. The United States, for example, acknowledged some "twenty principal federal agencies and another dozen or so offices and bureaus which have some concern with water resources." Germany had in excess of 16,000 water boards to deal with management of the resource at the local level. In Canada, where much of the responsibility for the management of water resources is under provincial jurisdiction, the chairman of the Inquiry on Federal Water Policy in Canada, Peter H. Pearse, told the International Seminar that "twenty-two federal departments and agencies have a significant interest in water."

By comparison, the problems facing Prince Edward Island in relation to water issues seem small and solvable.

On the other side of the coin, it must be emphasized *that we do have problems which, if not met with action, will only continue to fester and grow. The solutions to these problems will not be cheap and the financial resources available to deal with the situation are limited.*

From this perspective, it can be argued that the most significant change that has occurred since the inquiry of 1973 into land ownership and land use has been with respect to the topic of water. We make that statement because the *Report of the Royal Commission on*

Land Ownership and Land Use was silent on the subject. From this, we infer the quantity and quality of Island water was taken for granted less than two decades ago (although other sources indicate that water quality was already becoming a problem in portions of the north shore areas of Queens County during the summer season). In contrast, the cover story in *MacLeans* magazine ("Danger in the Water", January 15, 1990) began its lead article on water quality - or, more precisely, the lack of water quality - in Tignish:

> In February, 1989, Emily Gallant, who owns a beauty salon in Tignish, P.E.I., 100 km. northwest of Charlottetown, noticed that the water from taps at the salon was yellow. Gallant sent a sample to the provincial environment department, where government officials said that it was free of bacteria and fit to drink. Still, Gallant recalled, "I didn't feel right using it to wash my customers' hair." In August, provincial officials sent another sample of the water to a privately operated laboratory in Dartmouth, N.S. It reported that the water contained dinoseb, a pesticide that is used on pea and potato crops. Use of dinoseb, which can harm the fetuses of pregnant women, was banned in the United States in 1984 but remains legal in Canada. Said Gallant: "They said I shouldn't even put my hands in it, let alone drink it." Provincial officials subsequently discovered that 21 privately owned wells in Tignish were contaminated by dinoseb and advised householders to use alternative water sources while investigators looked for the source of the pollution.
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> *Although their water is not as bad as that in Tignish, residents of many Canadian municipalities and regions are expressing rising concern about the water they drink and cook with.* The reason: despite efforts to protect the environment, most Canadian governments still tolerate many industries and municipal sewage systems dumping pollutants into the nation's lakes, rivers and coastal waters. The discharges include raw sewage, industrial chemicals and airborne contaminants, which eventually are deposited in bodies of water. At the same time, the natural underground reservoirs, or aquifers, that provide well water are being polluted by pesticides and agricultural chemicals, and by leaks from gasoline, oil and septic tanks and industrial chemical dumps. [Emphasis added]

The passage might be seen to imply that Prince Edward Island faces a water quality crises of greater magnitude than elsewhere in Canada. While we do not wish to undermine the enormous inconvenience and cost arising from water quality problems at the individual level, it is also necessary to view the issue from the collective standpoint. In this regard, we need to put our water problems into perspective. The "good news" is that Prince Edward Island does not face the enormity of the challenges confronting many other jurisdictions, including other parts of Canada. In the *Globe & Mail* (August 31, 1989), Robert Jones cited an internal provincial government document showing that "more than half the drinking water supplies used by New Brunswick municipalities failed to meet national standards" and "only 13 of the 41 communities had no problem with any of their water sources." Elsewhere in the *Globe & Mail* (August 16-18, 1989), writer Andre Picard chronicled the Quebec situation, citing an astounding collection of statistics in support of his contention that the St. Lawrence River has been an open sewer for more than 450 years. Among the numbers he referred to were 275 tonnes of suspended solids and organic matter dumped *daily* along with an annual addition of 100,000 tonnes of toxic waste which resulted in an waterway estimated to contain more than 50,000 chemical products. This dismal portrayal was echoed by *Macleans* magazine, (January 15, 1990) which also drew some of its information from the Quebec situation:

> In many parts of Canada, municipalities contribute to water pollution by dumping untreated, or partially treated, sewage into rivers and lakes. In Quebec, only 250 of the province's 1,500 municipalities have sewage treatment plants. Less than half of Montreal's sewage is treated, and the remainder is still dumped, untreated, into the St. Lawrence River.
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> ……
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> Since 1978, the Quebec government has set aside $6.2 billion to install and improve sewage treatment facilities in the province. As a result, 61 new sewage treatment plants are expected to be in communities along the St. Lawrence River by 1993. As well, the plant that currently handles only about half of the Montreal Urban Community's sewage is being expanded and, by 1992, will be treating all of the city's sewage. Said Jacques Simon, assistant director of urban waste water treatment for Environment Quebec: *"In another five years, there will be no municipalities with populations greater than 2,000 dumping directly into that river. That's progress."* [Emphasis added]

The "Examination of Policy Issues Pertaining to Central and On-Site Water and Wastewater Systems for Communities on Prince Edward Island", submitted to the Department of the Environment in July of 1989, enumerated the communities in the Province that have already installed central sewage and/or water systems. This document indicates that Charlottetown, Summerside, Parkdale, Sherwood, Kensington, Souris, and St. Eleanors have both water and sewage systems, as does the West Royalty Industrial Park. Georgetown has a central sewage system and an industrial water system. The village of Victoria has a community water system. Central sewage systems are found in such communities as Abram's Village, Alberton, Borden, Bunbury-Southport, Cornwall, Crapaud, East Royalty, Kinkora, Miscouche, Montague, Mt. Stewart, North River, North Rustico, O'Leary, St. Peters Bay, Tignish, Tyne Valley, Wellington, West Royalty, and Wilmot. Private systems augment this network with a water system in Lewis Point Park, and both sewage and water systems in Seawood Estates and Stanley Bridge. "In addition there are numerous private water systems serving residential and cottage subdivisions whose rates have not had formal approval by either EMS or PUC, the present regulatory bodies," the report indicated. When we consider what appears to be the situation in Quebec, it would seem that Prince Edward Island has already reached the goal that Environment Quebec hopes to reach in another five years. We are tempted to suggest the Prince Edward Island scene exemplifies "real progress" - tempted, that is, until we recall the report given by Peter F. Stott on "Management of Water Resources in the United Kingdom". Speaking to the International Seminar on the Management of Water Resources, at p. 46 of the Proceedings, he stated:

> As a result of the postwar evolution the water industry in England and Wales was by 1974 already mature and had relatively high standards. *About 99 per cent of households were connected to a public water supply* and there was already a reasonable system and level of pollution control. [Emphasis added]

It is equally discomforting to learn that toxic waste water has been known to move some one thousand miles from its pollution source and then to ponder a map of Eastern Canada, considering the proximity of the St. Lawrence River and the coastline of Prince Edward Island! Merely to conclude that the Province has been well-positioned in relation to water management issues does not address the future in relation to this vital resource that is so much a key component in the resolution of many land use issues. To do so, we must first set out some basic information, already well known to those charged with water management in Prince Edward Island.

The first component in water issues is the availability. Prince Edward Island is entirely dependent on groundwater for its water supplies. As such, the water supply is contingent upon rainfall levels. According to "Our Land and Water", a publication prepared in 1979 and reprinted in 1984 for the Department of Community and Cultural Affairs, "[o]n Prince Edward Island, we are water rich. Our annual rainfall is about 112 centimeters, of which about 50 centimeters evaporates from the surface. The rest moves on and through the earth as groundwater, streams, ponds, and oceans. ... Eventually, about 20 centimeters (or about twenty percent) of our total rainfall travels down to the *zone of saturation* and becomes *groundwater*" [Emphasis original]. Accordingly, we have been told that, so long as adequate amounts of rainfall occur, water problems in the Province center exclusively on quality and not on quantity.

Although there is considerable truth in that general statement, there is a major exception that needs to be addressed. We have had considerable information made available to us which clearly points to supply problems for the City of Charlottetown (and other users of the city water supplies) in the present decade unless remedial action is forthcoming.

The City of Charlottetown has been involved in water management for more than a century. In 1881 a study carried out by Gilbert Murdock recommended that the new water supply for the City of Charlottetown be pumped either from the Winter River or Gates Brook. It may have been no coincidence that an epidemic of disease in the capital in autumn of 1885 was soon followed by an ambitious project to provide water and sewage systems. The Commission of Water Supply was established through the *Charlottetown Water Works Act* passed in the Provincial Legislature on May 7, 1887. In the same year, a further study carried out by M. Tidds suggested the present location of the Malpeque pumping station for reasons that included the fact that an analysis of the water taken from the proposed site ensured its quality, the water was soft and almost wholly free from nitrates, ammonia and other unhealthy ingredients, and water rose at a place remote from barnyards, cesspools and other probable sources of contamination. (It is interesting to note that even then the concern for location of a water supply free from contamination was evident.) Once the water system was in place, preparation for a sewage system began. By the *Charlottetown Sewerage Act* (assented to on May 14, 1898), the Commissioners of Water Supply became a body corporate known as the Commissioners of Sewer and Water Supply. Today, the successor is the Charlottetown Water Commission which supplies water not only to the City but to many areas adjacent to and near it.

Over the years, the system has expanded so that there are now three main pumping stations: the Malpeque and Lower Malpeque Stations (1888,1903), Brackley Station (1930) and the Union Station (1948).

As urban development began to encircle the City of Charlottetown, problems developed with respect to the quality of its water supplies. The establishment of a food processing plant in the Sherwood Industrial Park upstream from the Malpeque pumping station resulted in difficulties in the late 1960's and early 1970's. Discharge from the plant was felt to be the source of phenol content that gave rise to intolerable taste and odor problems in parts of the water system and the pumping had to be removed from service from time to time. Concern about a serious reduction in fire fighting capacity and the potential need to ration supplies among its twenty thousand users was expressed by the Commission. Eventually the Brackley and Union pumping stations were upgraded and the Malpeque pumping station was placed on a standby basis because of its susceptibility to contamination. That decision resulted in a reduction of available water supply by some 25-30%.

Reliance on supply from these stations meant reliance on water coming from the Winter River Basin which was susceptible to contamination from agricultural sources. The Commission discovered this soon after it relegated the Malpeque pumping station to its standby designation, for improper manure management on a dairy farm in the Winter River Basin resulted in an accidental spill that produced discoloration and odor problems. Subsequent bacteriological analysis showed high coliform and fecal counts that required prompt remedial action.

At present, the airport and its existing drainage systems are designed to empty into the Winter River basin area. Agricultural operations continue to be carried on in close proximity to the Union and Brackley well fields. We understand these include potatoes growing within 100 feet of the Union well field, as well as nearby farming operations involving the storage of liquid manure.

While these issues are associated with the ability to supply quality water, there are issues associated with volume as well.

When the City of Charlottetown celebrated the centennial of its incorporation, in 1955, its population (based on the 1951 census) was reported to be 15,887, while a further 4,000 people were estimated to live in the suburbs. According to a city history prepared in honour of this milestone, water consumption per day was 1,789,653 gallons, which would compute to an annual volume of 653,123,345 gallons. Suburban areas were not served at all by the city water system, so this volume would apply to less than 16,000 residents and businesses. The population of the City of Charlottetown in 1955 and that of 1986 has varied by little more than 100 people. Although numbers grew in 1961, 1971 and 1976, there was a marked decline in the census of 1981, when the population was recorded at 15,282. By 1986, it had increased to 15,776 - still below the 1951 level. Moreover, there was a marked change in commercial users over the years. Traditional heavy users of water have moved outside city boundaries. In 1955, there were 20 service stations within the city itself. Some 466 hospital beds were among the water users at that time. Local dairies and bottling plants were found in much greater proliferation. Once these changes are considered, it comes as no surprise that in spite of increased volume usage among households, the requirements for water for the city itself are not markedly different than they were 25 years ago. However, the volume of water now required by the Commission is almost double what was required at the time of the City's centennial. The reason is quite simple: over the years the Commission has become the supplier of water for a number of the suburban areas. At the present time, the Charlottetown Water Commission supplies water to several "outside" communities and customers, including the airport and hospitals, the Hillsborough Development, Sherwood, and the West Royalty Industrial Park.

We understand that in 1984 the annual safe yield from the Brackley well field was said to be in the order of 0.5 billion Imperial gallons, while the annual safe yield at the Union well field was estimated to be in the range of 0.6 to 0.8 billion Imperial gallons. Current findings now suggest the safe yield from these two well fields to be 1.1 billion Imperial gallons per year. Present pumping from these two fields is approximately 1.05 billion Imperial gallons per year or within 5% of safe yield. It is estimated that the safe yield would be exceeded by 1993.

The detrimental effects of exceeding the safe yield will mean continuous lowering of pumping levels and an increase in pumping costs, unacceptable drawdowns in private wells in the area, and a seasonal reduction of stream flow in the Winter River so that maintenance flow for fish stocks and riparian users would not be available.

The Charlottetown Water Commission is now at a crossroads with two options available to them - a redevelopment of the Malpeque pumping station and/or development of an additional water supply in the Winter River Basin area. To assist in planning for the future a major study on the "Hydrogeology of the Winter River Basin" has been completed recently by Mr. Rory Francis of the Water Resources Branch of the Department of the Environment.

The recommendations for groundwater supply and development and for future research are contained in this report at pp. 113-114. These are as follows:

> 8.2.1 Groundwater Supply and Development
>
> Suitable aquifer characteristics, high yielding wells, good quality water and few conflicting land uses strongly support the continued use and development of the Winter River basin for municipal groundwater supply.
>
> 1. It is recommended that, in order to maintain baseflow and protect other surface water uses, withdrawals from the existing well fields at Union and Brackley be limited to 60% of average annual recharge, or 5.0 x 106m3/year. Further, this should be considered an interim maximum, reducing to 55% of recharge, or 4.6 x 106m3/year as soon as additional groundwater supplies are developed.
> 2. Good potential for future development of groundwater supplies exists farther down the Winter River watershed. Total annual groundwater withdrawals (all wells) in the recharge area, for any proposed well field, should be planned at 50% of average annual recharge, or about 2.5 x 105m3/year, for each km2 of recharge area. Thus, the choice of well field location should be based on desired annual production, as well as local land use and well yield and water quality tests. For example, a well field developed in the Hardy's Pond - York Road area (recharge area 25.6 km2) could withdraw about 2.0 x 106m3/year in addition to current pumping at Union and Brackley.
> 3. Production wells should be located in areas of near-surface water table, where the upper, more highly fractured portion of the aquifer is saturated. Locations in valleys would also benefit from the effect of the sloping water table.
> 4. In the development of sites for large scale withdrawal of groundwater, the safe yield of the well, the well field, and the watershed should each be determined through appropriate testing methods. Detailed assessment of step-drawdown tests should be utilized to optimize the pumping rate and reduce pumping costs.

5. *Groundwater protection zones should be established around existing and proposed well field locations in the Winter River basin. On properties owned by the Charlottetown Water Commission, activities should be limited to those involving provision of water supply. Within a radius of 250 m of production wells, no commercial, industrial or residential development should occur and restrictions should be placed on agricultural activities. Within a radius of 500 m of each well field (60 day protection zone) the storage and handling of hazardous materials, including petroleum products, should be prohibited, and all development proposals should be subjected to an environmental impact assessment. In the remainder of the recharge area for the well fields, major development proposals should be subjected to an environmental impact assessment.*

6. An assessment of the most appropriate means of establishing the above groundwater protection zones must be carried out. Possible legislative instruments include the Planning Act, Environmental Protection Act, Greater Charlottetown Environmental District Act, and municipal official plans and bylaws.

7. Observation wells at Harrington, Airport #7, and Union and Brackley well fields should be maintained. The stream gauging station at Brackley should be considered for relocation to Union well field.

8. The pond at Brackley pumping station does not serve a useful purpose and should be released. There is potential for anoxic bottom sediments to detrimentally affect groundwater quality.

8.2.2 Future Research

1. The effective porosity of fractured porous aquifers and thus estimates of average linear groundwater velocity should be measured through field scale tracer tests. This would allow better definition of groundwater protection zones in the Winter River basin.

2. The numerical model for the Winter River basin, being completed at Memorial University of Newfoundland, should be utilized to predict the effects of possible one- or two-year drought events on water levels in the basin, especially in the well field areas.

3. Geochemical and isotope methods should be utilized to further clarify the contribution of groundwater baseflow to streams, especially during the spring recharge event. [Emphasis added.]

The Charlottetown Water Commission has proposed that it become the supplier of all water for the greater Charlottetown area, including Sherwood, Parkdale, West Royalty, East Royalty, Hillsborough Park and the outlying areas as they develop. We understand the Commission proposed approximately two years ago that it supply the water in bulk to community water authorities that would provide their own distribution systems.

At the risk of appearing to formulate a poor pun, we acknowledge that we have delved into the water issue only in a shallow way. It is a complex one, for the scientific studies are capable of interpretation only by skilled personnel and the political issues are equally complex. However, we have formulated a series of findings that are dictated by little more than common sense.

The infrastructure required to provide adequate and acceptable water to the residents of Charlottetown *and* its surrounding areas in the twenty-first century require far-sighted planning and development. The City itself has infrastructure that dates back to the original installation of the system. Much of that infrastructure will require replacement soon. Future expansion to ensure supply is needed. Land use protection measures are required to assure supply. *It is a pitiful waste of resources to have constant remedial actions and competing expertise through a multiplicity of jurisdictions and authorities.* The resource is of vital importance to all residents; the water issue in relation to the Charlottetown area *involves one-quarter or more of the Province's population.*

Accordingly, we recommend:

- **THAT the Province of Prince Edward Island provide the necessary leadership to ensure long-range water and sewer services for the greater Charlottetown area, including a commitment to share costs with the various jurisdictions and to promote a co-ordinated effort to ensure a regionalized and standardized service under an expanded water authority that uses the long-standing expertise of the Charlottetown Water Commission.**

In support of this recommendation, we can but repeat the comments made by the Honourable Gilbert Clements when he addressed the Charlottetown Water Commission at a dinner to mark the centennial of the City's water system:

> Water, a product of nature, is too often taken for granted. Only when the supply gets low or the taste becomes unpalatable does the average person consider where water comes from, or how it gets to our taps.
>
> It is interesting to note that the requirements and criteria for central water supply systems are very much the same today as they were when Gilbert Murdock carried out his report on the water supply for the City of Charlottetown in 1881. Murdock noted that 'a good source of supply should be able to furnish -- (1) an abundance of water for every purpose at all seasons of the year; and (2) the quality should be such as to fit it for manufacturing and family use, as well as for ordinary municipal purposes."
>
> ....
>
> *The foresight of the City Fathers of 100 years ago, and the work carried out by the Water Commissioners in the century since, is indeed a model of the kind of planning and commitment necessary to ensure a safe level of quality and quantity in municipal water supplies.*
>
> ...The commitment of the present City Water Commission, and *my commitment as Minister responsible for the environment, is to ensure a ready supply of uncontaminated water for the next 100 years, and hundreds of years thereafter.* [Emphasis added]

The time has come when the Province must bring into play the leadership, commitment and resources to ensure that goal.

To secure quality water supplies elsewhere in the Province, it is equally important that leadership, commitment, and resources be used from one end of Prince Edward Island to the other.

This is not to suggest that water and sewer issues have not been under constant review and study. The Province has been fortunate that over the years it has had dedicated professionals who have endeavoured to keep apace with an increasing number of problems. However, *we are not convinced that government has been willing to give this matter the priority it now needs.*

In the autumn of 1987, the Province entered into the Canada/P.E.I. Water Resources Management Agreement, a three-year agreement aimed at studying groundwater, surface water, estuaries and sewage disposal.

As part of this agreement, a report was prepared to evaluate groundwater resources potential for selected Island communities. A total of 12 communities were chosen for the studies. Most were incorporated communities so the boundaries encompassed by the findings would not necessarily be reflective of the users in the area if the community was ringed by a high density of ribbon development or was adjacent to another municipal area. One of the study areas (Bunbury/Southport) is actually a composite of two municipalities while another one (Cavendish) is not (at this writing) an incorporated area with defined boundaries as such. This observation does not necessarily detract from the validity of the study itself but it is a limiting factor were the study to be used as a cornerstone in planning future water systems in any given area.

The Jacques, Whitford study revealed to us several points of interest.

First of all, it is apparent that an impressive amount of data has been collected over the years and many of the records have been stored on computer. The study outlined these sources under its discussion of the existing data base, at pp. 4-8, portions of which were as follows:

> 2.1 Well Drillers Records
>
> Well drillers have been required by law to submit a copy of their Well Drillers Report for every well drilled, since 1971. This information has been computerized, with records having been entered on computer by the Department for the period up until 1985. The pertinent portions of these records (up to the end of 1986), namely Owner's Name, Drilling Date, Northing & Easting, Depth, Ground Surface Elevation, Static Water Level, Casing Length, Yield Test Results, summarized Geology, and Water Occurrences, have been tabulated for each community. . . .
>
> These tables provide an immediate idea of the general well construction details within each community, and allow some data manipulation, to determine average depths, static water levels, casing lengths, and yields. The estimated well yields must certainly be used with caution, because they are generally based on very short term "blow tests" or bail tests conducted by the drillers immediately on completion of the well. However, they are useful in giving relative yields of the different aquifer zones encountered.
>
> Static water levels also must be used in a general way, because such are only valid for the time of drilling, and are therefore subject to seasonal effects. More importantly, they may not be true static levels because the wells may not have had time to fully respond since the end of the drilling operation. The accuracy and detail of the

geology and the depth of water occurrence are dependent on the driller involved. In addition to the variation in completeness of reporting styles, consistency in geologic description is often a problem as each driller has his own terminology for specific strata types, and some drillers have a better feel for water occurrences. Therefore this information must be used with care, preferably in the context of the overall site geology. . . .

2.2 Water Quality Analyses

There is a large data base of water quality analyses on file at the Department, which has been compiled on computer for the communities addressed in this project. . . . The table as a whole provides a good general overview of the water quality within the community, however there is probably some bias towards the problem areas since samples were often taken during water quality complaint investigations. An exception would be the public buildings, schools, hospitals, senior citizens homes, etc., which are generally sampled on a regular basis, and in addition are easily located.

2.3 Geology

There are several current sources of geological information available, which provide a very good detailed description of the geology of Prince Edward Island (Frankel, 1966; MacDougall & Veer, 1981; van de Poll 1981), and some earlier works. There are also reports dealing with the hydrogeology of the Island, some dealing with the hydrogeology of specific areas (Pollitt, 1950; Pollitt, 1951), and others of a more general nature (Brandon, 1964; Francis, 1981). This information can be correlated with that recorded on the Well Drillers Records to determine what is to be expected when drilling a community water supply well.

2.4 Underground Storage Tank Locations

The Department of Community and Cultural Affairs, Environmental Services, has a very active Underground Storage Tank section, with a very good computer inventory of existing underground tanks. This database was accessed to determine underground tank locations within the communities being considered, their sizes, and any spills that had taken place. By law all underground storage tanks that are in use must be registered, and any abandoned tanks must be removed. Because the regulations are relatively new, and there are many very old tanks in the ground, there are likely to be a number of underground tanks that are not recorded on the computer inventory. A more detailed study of the area designated as a possible community water supply well location should be done in each community, to determine if there are any such unregistered underground tanks within the zone of influence of the well. This could include a review of past deeds records to locate discontinued petroleum service operations.

There have also been two recent surveys of waste disposal sites on the Island (Dept. of Comm. & Cult. Affairs, 1983; DCCA, 1984), which will indicate whether there could be contamination problems from improper landfilling operations. It is expected that the suggested well locations will simply avoid those areas where past or present landfilling operations have taken place.

2.5 Pump Test Data

> There have been numerous longer term pump tests run on the Island, some of which are in or near the communities being evaluated. There were reviewed, and where the information is found to be valid, were used in determining the groundwater resource potential for a community.
>
> 2.6 Contamination Case Histories
>
> As indicated above, any chemical or petroleum hydrocarbon spill that occurs on the Island must be reported to the Department, and there is a computer inventory of these spills. There are also files kept on other major contamination problems, such as bacteria, high iron and manganese, high nitrates, etc. There is usually a number of these case histories within each community. These indicate the potential for naturally occurring problems such as iron and manganese, and also indicate those areas that should be avoided, both because of potential future problems, such as underground storage tanks, sea water intrusion, pesticide contamination or road salt contamination, or because of past problems from the same sources. The extent to which a past problem has affected an area will indicate the susceptibility of the aquifers in that community to contamination, and therefore affect the protection measures taken for the community supply well.
>
> 2.7 Planning Information
>
> Some population statistics are available for the various communities, and some of the communities have official plans which indicate past growth rates, and expected future growth rates. There are also zoning maps available for a number of communities. Based on this information, an estimate of expected future population will be made, and therefore rough estimates of water demand. Because of the limited data base, and lack of socio-economic profiling of most of these communities, these estimates should only be used in general terms. More detailed forecasting and calculations will have to be done when and if a community water supply is considered.

This summary not only indicates the vast array of information already compiled on water-related matters; it also illustrates an interesting lesson in data collection. What would seem to us to be one of the most essential and fundamental, yet simplistic, parts of any such data base would be population figures. However, the consultant's commentary indicates this to be one of weakest portions of the existing data base.

The second striking factor we noted in relation to the Jacques, Whitford study involves the selection of the 12 study areas. The Report does not provide any data as to why these areas were chosen except that the list "was priorized for water resource assessment by the Department of Community and Cultural Affairs, Water Resources Branch". We do not question the selection, but, in comparing the list with the major water quality investigations conducted by the Water Resources Branch in 1988 (according to the Annual Report for the Department of Community and Cultural Affairs) we find that only three of the areas identified as being involved in major water quality investigations were subject to study by Jacques, Whitford. Several of these areas were not municipalities (or densely populated areas). We refer to the differences between the two "lists" simply because it illustrates water quality problems are by no means confined to the 12 areas studied by Jacques, Whitford.

This brings us to the third point we noted in respect to the groundwater evaluation project. In relation to each of the 12 areas studied, these consulting engineers gave an estimate as to the percentage "of the community [that] is presently affected adversely by groundwater contamination, either manmade or natural, or has the potential to be impacted". Such a statement is sufficiently general and problematic that there are many risks in adopting it as prediction for future woes. After all, it could be said that there is a "potential" for groundwater contamination adversely affecting 100% of each and every community. The probability of realizing this potential is increased when all sources of contamination "either manmade or natural" are included in the assessment, since this will embrace far more than oil and chemical contaminants but also salt water or surface water intrusions that may occur naturally. Moreover, the statement does not differentiate between adverse effects that might be quite temporary and/or readily solvable through small remedial actions. In spite of the dangers, then, of reading too much into the assessments provided by Jacques, Whitford, the statements are worthwhile. We note that the percentages ranged from a low of 20% (in Murray Harbour and Murray River) to a high of 95% (in Cornwall). In other words, the engineering consultants estimated that 95% of the Community of Cornwall was "presently affected adversely by groundwater contamination, either manmade or natural, or has the potential to be impacted".

Table 1 includes the percentages provided by the consultants, together with information on the presence or absence of centralized water or sewerage systems in each community, as found in the "Examination of Policy Issues Pertaining to Central and On-Site Water and Watewater Systems for Communities on Prince Edward Island" at pp. 34-5.

TABLE 1

	Percentage*	Has Sewerage System
Minminegash	70	No
O'Leary	55	Yes
Montague	45	Yes
Alberton	30	Yes
Tignish	30	Yes
Borden	75	Yes
Cornwall	95	Yes
Bunbury/Southport	45	Yes
Murray River	20	No
Murray Harbour	20	No
Cavendish	50	No
St. Louis/St. Edward	not listed	No

* Percentage found in the Jacques, Whitford study on the percentage "of the community [that] is presently affected adversely by groundwater contamination, either manmade or natural, or has the potential to be impacted".

What becomes obvious from reviewing Table 1 is that the presence of a community sewage system is no guarantee of a quality water supply. The two areas identified by Jacques Whitford where the greatest proportion of the community were likely to experience adverse effects (Cornwall, Borden) both had sewage systems, while the two areas where the smallest portion of the community were likely to experience adverse effects (Murray River, Murray Harbour) did not have sewage systems. This should come as no surprise for an off-site sewage system is essentially a protection of the water supply from contamination from on-site waste treatment facilities but it does nothing to protect the water supply from other sources of contamination. The comparison, however, points out graphically that determining whether or not an area has a priorized need for measures to ensure a quality water supply should not be contingent on the presence or absence of off-site sewage facilities.

We are of the view that a province-wide exercise in planning and improving sewer and water infrastructure is needed and should be a major government priority. To some extent, this exercise is already underway but, without undervaluing the efforts being made in this regard, we think much, much more needs to be committed.

Resources now available in this regard have frequently been committed exclusively to remedial action. To use an imperfect analogy, the situation is not unlike a fire department whose resources and energies are being dissipated in putting out so many fires, both large and small, that there is little or nothing left for fire prevention or training or more modern equipment.

We are convinced that remedial efforts are a very costly and inefficient way to deal with what is an ever-increasing problem. This is not to say that remedial actions must be neglected. Continued attention must be directed towards dealing with problems as they arise. But these measures must be combined with a planning and building exercise that will ensure water quality and effective sewage treatment facilities throughout the Province for the future.

Accordingly, we recommend

- **THAT a province-wide plan be developed to ensure communities and other densely-populated areas have adequate off-site water and/or sewage systems, where required, whether through expansion or upgrading of present infrastructure or new development.**

We see the need for a plan that would "priorize" needs in much the same way that the Province now plans in advance for its school construction program. The priorities allocated in the plan should be publicly known.

Preparing such a plan may require considerably more effort than is involved in school planning for this is an area where the Province shares responsibilities with municipalities. Moreover, education at the public school level is not based on the "user-pay" concept, whereas users and non-users capable of being serviced are major payers in water and sewerage systems.

In order to provide incentives to municipalities and their ratepayers for participation in implementing the plan, we feel it is necessary that they receive suitable rewards for their cooperation and penalties for not acquiescing.

A central incentive for participating will be the amount of financial backing that will be available for capital costs. Very likely it will be difficult to attract an infusion of federal dollars to the same extent that this was possible during the era when many of the smaller communities first developed infrastructure. We would urge the Province to explore creative ways in which such an undertaking might be mounted. For example, we feel many citizens who are prepared to invest in Canada Savings Bonds, Provincial Deposit Receipts or Guaranteed Investment Certificates but who are not otherwise interested in the "money markets", might be willing to acquire "Green Bonds" that offered a relatively secure investment and a reasonable rate of return, particularly if, at the same time, they were aware that their investment was enabling Prince Edward Island to sustain its environment.

We would also suggest that government examine closely the Self-Help program instituted in rural upstate New York, which we have described in Appendix C, for we believe this contains a number of useful ideas while encouraging local communities to conserve money, to do things for themselves and, simultaneously, to get much accomplished.

At the present time, funding available to municipalities in this regard is not separate from funds available for remedial action. As a result, most or all of the funding in any given year is absorbed in dealing with the unexpected crises that arise. It is necessary that a separation must occur so that financial aid is available above and beyond what must be set aside for contingencies.

We are not prepared to make recommendations as to what proportions of costs for new and improved infrastructure should be allocated to be the responsibility of the Province. But we are prepared to suggest means of providing a "carrot and stick" approach to municipalities (and other densely-populated areas).

While communities may choose to opt out of the program, government must adopt a policy that anyone doing so, accepts responsibility for the results. Having made the choice, then communities adversely affected by sewer and/or water quality problems must bear *full* financial responsibility for remedial actions that may be required in the future. We would suggest that a timeframe of 10 years would be appropriate in which to impose such a freeze.

This is not to say that all communities require off-site servicing throughout the entire geographical area. For some, off-site servicing may be avoided entirely, providing the community has adopted large lot sizes and other planning devices. Others may require off-site servicing or expansion of an existing system only in isolated parts of the community. What is imperative, however, is that all communities be compelled to consider their circumstances, make decisions regarding their long-term future and live with the consequences of their decisions.

In the past, some municipalities have installed infrastructure at no small cost to local ratepayers. While this has had many positive effects in the long-term, these systems were often designed for expansions. It was felt that serviced land would be attractive for homebuilders and costs would be spread eventually over a wider base. But the Province failed to implement policies that would allow the marketplace to operate in this fashion. Building permits were routinely issued to build single-family dwellings in areas near serviced land so residents could enjoy the benefits of a community without bearing the costs of having off-site services. Homeowners have been all to willing to be short-sighted in their planning. The cost of providing onsite sewer and/or water could be rolled into the home mortgage. The homeowner may have felt maintenance costs for a well or a septic tank would be, at most, a possibility but not a probability at the time of new home construction, whereas user fees for a public utility were an annual certainty. In any event, we are of the opinion that much of the ribbon development surrounding many of the communities in the Province can be attributed in large measure to either the annual levy of fees for sewer and/or water, the differential in property tax between incorporated and unincorporated areas, or both.

The Province itself has been a guilty party in this regard, placing its institutions and other public buildings away from serviced areas rather than utilizing nearby, existing infrastructure. (Parenthetically, such decisions usually mean such places are less pedestrian-accessible for nearby residents.)

Land planning measures to prevent future development of this kind from happening are imperative. We think it essential that *the communities which have been willing to invest in the preservation of quality water supplies should be the ones supported in obtaining development and growth opportunities.*

Since fees are levied on both users and those capable of being users, the existing rules do provide financial incentives for present occupiers of land to use services that are provided. However, this is not always the case. Instances have been reported to us where there are local suspicions that raw sewage is still flowing directly to rivers and streams, even when an off-site system is available. Existing legislation that prohibits such pollution should be given a higher public profile and enforcement of such measures must be granted a high priority.

Accordingly, we recommend

- **THAT the province commit more adequate resources for the improvement and/or expansion of water and sewer infrastructure so that a more intensified program, based on the plan, is costshared with the municipalities.**
- **THAT those municipalities which require off-site servicing and that cannot receive ratepayers' support for participation in the provincial plan to improve water and sewer infrastructure become ineligible for any provincial funding to cost-share subsequent remedial actions and that such a freeze be imposed for a long-term period of 10 years.**
- **THAT the participants in this plan to improve water and sewer infrastructure examine new means of meeting this challenge, including consideration of the "Self Help" program; and that, as a minimum, the Department of Community and Cultural Affairs (in conjunction with the P.E.I. Public Utilities Commission and the Federation of Municipalities) prepare informational materials and provide these to all municipalities so there is a clear understanding among the volunteer laypeople involved in municipal government and local residents of the necessary legal, financial and practical steps involved in undertaking a capital**

expenditure project of this type and the alternatives open to them through such devices as large lot subdivision requirements.

- **THAT provincial policies, including the location of public buildings and the issuance of building permits for new construction, should seek to enhance communities that have taken steps to preserve the quality of their water resources.**
- **THAT measures prohibiting raw sewage from entering streams and rivers and measures involving standards for the installation and maintenance of on-site wells and septic tanks be publicized and strictly enforced.**

Until recently, responsibility for water and sewer, at the provincial level, was divided between two key players: the Department of Community and Cultural Affairs and the Public Utilities Commission. With the creation of a separate Department of the Environment, a third entity is added to this mix.

The Public Utilities Commission is established by statute and is responsible chiefly for utility regulation. Both community and private water and sewer systems come under the jurisdiction of the Public Utilities Commission in respect to the rates that may be charged. However, the Department of Community and Cultural Affairs has responsibilities with respect to sewage and water systems in respect to planning and development. The relevant legislation is quite confusing and the responsibilities are not clearly defined. For example, the Public Utilities Commission has no mandate with respect to the environment. Until recently, the Department of Community and Cultural Affairs granted subdivision approvals without informing applicants of the role of the Public Utilities Commission in relation to the development of water and sewage systems. The need to have adequate coordinating mechanisms when dealing with adjacent municipalities and/or municipalities and nearby subdivisions, is also of concern to us. The Charlottetown area, with some 15 incorporated municipalities within a 7-mile radius, is the foremost example of this but there are others. Again and again we were presented with examples of short-sighted and/or selfish decisions, often rooted in municipal autonomy, where there was no one responsible for looking at the larger picture. There is no authority to legislate or order two or more participants to take into account the long-term, broad perspectives for an area. The result, all too often, is that money is being wasted by the duplication of infrastructure, expertise, or remedial actions. For example, we learned that there is no mechanism to ensure compatible systems. Each community can install something different; when two adjacent communities proceed in this fashion, future growth of the systems can prove to be impossible unless one or both systems are replaced.

A related area of concern is the lack of coordination and/or cooperation between utilities and/or among utilities and other services within a geographical area. This wastes money by duplication of infrastructure, resources and expertise. The result may be "Mickey Mouse" disputes as to who will do what and who will pay but such trivial disagreements create big public nuisances, as well as being poor utilization of scarce resources. For example, manholes are installed at different levels, depending on the jurisdiction. Nor is there a coordinated effort with respect to the installation of utilities. The City of Charlottetown installs hot water heating in autumn, then repaves; electrical underground work is commenced the following spring in the same area and re-paving is needed once more. We challenge the City to compute the number of times it has paved and re-paved some of its streets over the past decade, commencing with Kent Street in front of City Hall! This is not to say the City of Charlottetown is the sole culprit - or victim - of this duplication. One suggested cure for this that we found had merit was the possible imposition of a general rule that, except in the event of emergencies, no piece of land could be disrupted for infrastructure more than once in any five-year period. This would force the various jurisdictions and entities to do sufficient planning and coordination of their efforts to avoid much of the repeated disruptions now taking place. Moreover, it would give the province control over any utility that is now federally regulated to ensure cooperation in this regard.

Accordingly, we recommend:

- **THAT the respective roles and functions of the Public Utilities Commission, the Department of Community and Cultural Affairs and the Department of the Environment in regard to sewer and water issues be clearly defined and appropriate changes in legislation be made where necessary.**
- **THAT appropriate measures be taken to ensure better coordination mechanisms in order to streamline sewer and water planning, development and regulation between departments and the Public Utilities Commission, as well as between and among various jurisdictions, other utilities and other agencies.**

We have focused our attention thus far on off-site services - or areas likely to need off-site services. The *Maritime Provinces Atlas* indicates that there was a population of 57,828 living in villages, towns and cities in 1986, of which 4,431 are not served by sewage; 38,183 served by primary treatment facilities and 15,215 served by secondary or lagoon treatment. While there are some residents outside municipalities serviced by some form of off-site sewer services, it would appear that more than 50% of the Province now relies on on-site services. Even greater numbers rely on private wells for their water supply since there are many municipalities without off-site water systems.

Traditionally, the Province exercised control over persons involved in well drilling for water under the *Well Drillers Act*, R.S.P.E.I. 1974, Cap. W-15. This legislation was repealed with the proclamation of the *Environmental Protection Act*, R.S.P.E.I. 1988, Cap. E-9. Under the provisions of an earlier *Environmental Protection Act*, R.S.P.E.I. 1974, Cap. E-8.1, regulations had been passed to provide for A Code for Plumbing Services and for Sewage Disposal Regulations. It would appear that regulations essentially adequate to deal with the installation of water and sewer systems are in place or the power exists to put them there. The enactment of Water Well Regulations under the authority of the *Environmental Protection Act*, effective April 1, 1990, by Order-in-Council No. EC188/90, demonstrates the on-going concern about water quality issues in the province.

The "Examination of Policy Issues Pertaining to Central and On-Site Water and Wastewater Systems for Communities on Prince Edward Island" which was submitted to the Director of Water Resources for the Department of the Environment in July of 1989, examined a number of the issues associated with water and sewerage in the Province. The Report made some 20 recommendations, at pp. 86-93; these were as follows:

Recommendation 1: That the Department of Community Affairs (CCA) now require by virtue of the Environmental Protection Act that all subdivision plans must be registered with the province before development may proceed, and that approval by CCA must be obtained before a plan may be registered.

Recommendation 2: That CCA immediately approve an increase in minimum lot size requirements in unserviced areas to 30,000 square feet, with a minimum frontage of 125 feet, with provision for further increases to this minimum requirement in any application, in according with the finding of the mandatory soils assessment and groundwater quality assessment.

Recommendation 3: That CCA then ensure that there is adequate statutory support for its present approach to subdivision approval, emphasising the results of soil assessment and permeability tests in determining minimum size requirements for a particular subdivision or single lot, and also including such factors as topography, relationship to other elements in the environment, and depth to bedrock and groundwater.

Recommendation 4: That CCA now impose restrictions on the size and design of buildings permitted to be erected on previously approved subdivisions, where lot size is less than new minimum requirements for long-term on-site servicing.

Recommendation 5: That government authorize changes to the Sewerage Control Regulations in the following matters:
* to increase septic tank capacity
* to require two-chamber septic tanks in new systems
* to approve a greater range of disposal bed designs
* to revise disposal bed requirements in the matter of the aggregate base
* to require that a geotextile barrier be placed between aggregate and topfill in disposal trenches/beds.

Recommendation 6: That government authorize changes to the regulations bearing on well construction to require:
** inspection of all well installations
** grouting of the casing to bedrock
** sealing off the annular space with barrier material
** extension of the well casing to the surface, and sealing off the top of the casing
** use of a pitless adapter to connect the well pipe to the domestic system
** proper construction of the well-pit and closing off the well top
** contouring of the soil surface around the well.

Recommendation 7: That in the absence of provision for licensing and bonding septic system installers, CCA abandon the practice of partial inspection of on-site sewerage system construction in favour of full inspection, that voluntary compliance certificates no longer be accepted from system installers, that inspection include review and approval of back fill proposals, and that inspection staff be increased to ensure a one-day turn-around in response to builder requests for inspection.

Recommendation 8: That CCA now adopt as policy that approval of subdivision development in built-up areas be conditional on the establishment of a prior plan for water sewerage servicing, in conformity with the official plan for the community.

Recommendation 9: That until standards and practices have been improved to the point where on-site systems are properly designed, constructed and maintained, CCA consider offering a suitable incentive to developers to encourage the installation of central systems in green field situations.

Recommendation 10: That CCA, in conjunction with the P.E.I. Public Utilities Commission, establish minimum standards governing the design and construction of central systems, including a requirement for inspection during construction.

Recommendation 11: That CCA require that core elements of all central systems be planned and designed in light of ultimate demand within the servicing boundary set out in the servicing plan, with actual construction of various elements of the system being phased, as appropriate.

Recommendation 12: That CCA establish, in conjunction with the Federation of Municipalities, a system whereby there would be joint Provincial-Community ownership of all central systems in the province and a mutually acceptable division of ownership responsibilities; this could include community responsibility for direct operation and maintenance, and provincial responsibility for overseeing all systems during planning, construction, and operation.

Recommendation 13: That CCA seek statutory authority from government to establish, in consultation with the Federation of P.E.I. Municipalities, a master strategy governing water supply to all communities on Prince Edward Island, irrespective of community boundaries.

Recommendation 14: That in remedial situations CCA not consider providing assistance to any community requesting funding to install a remedial central water or sewerage system unless that community has evaluated more economical remedial measures, including the neighbourhood cluster system.

Recommendation 15: That CCA adopt a policy that after 1990 no assistance will be given to any unserviced community in dealing with water or sewage disposal matters unless such community has adopted and implemented a compulsory community-wide septic tank pumping service, operating on a three-year pumping cycle.

Recommendation 16: That CCA adopt annual licensing and bonding requirements for all system installers, and that successful completion of annual one-day training courses be a mandatory condition for renewal of licenses.

Recommendation 17: That CCA extend regulations governing well construction to include the connection of the well to the domestic distribution system; and that licensing provisions be extended to include this function.

Recommendation 18: That CCA prepare simplified, well-illustrated handbooks for home owners explaining basic requirements for lot planning, as well as principles and practices governing construction of both wells and sewerage systems.

Recommendation 19: That CCA commission or undertake a public education program covering on-site water supply and sewage disposal issues, including the preparation of manuals similar to those adopted by the Department of Energy and Forestry on the subject of Energy Technologies now in use in the province's school science programs.

> Recommendation 20: That CCA undertake a demonstration program in selected communities during the summer of 1990 to assist property owners to prepare property plans, locating wells and septic system components, including location and depth of the septic tank and disposal beds, as well as relationships with on-site components on adjoining properties. The findings of such a project would then serve as a basis for further public education programs.

We are not in a position to evaluate the technical merits of several of these recommendations. However, we are of the view that the list of recommendations contained in this report does contain a number of proposals that should be given careful consideration and we are prepared to endorse, in principle, these recommendations where they do not conflict with the solutions we have proposed in this report.

Preventive measures must be a central focus in order to ensure far-sighted planning for water quality for generations to come. In line with this philosophy, enhanced emphasis must be given to protecting groundwater from contamination. This protection must be aimed at two levels: individual on-site wells and watershed areas. The province has been very active in this regard in relation to protection measures from petroleum pollution. Equally important, in our view, is the protection of groundwater from hazardous wastes and from agricultural contamination, particularly from nitrates and pesticides. As well, long-term land use planning requires that more commitment be directed to the protection of watershed areas from development that would pose a threat, now or later, to water quality (or quantity).

Accordingly, we recommend

- **THAT the Department of Community and Cultural Affairs, in conjunction with the Department of Agriculture, develop greater public awareness on the means of preventing point source contamination of groundwater, particularly where such contamination stems from hazardous waste and/or agricultural practices.**
- **THAT the comprehensive land use plan for the province include developmental controls for the protection of watershed areas in order to preserve water quality.**

Chapter 22

GARBAGE

While it has often been said that "one man's trash is another man's treasure", there comes a time when the things around us cease to be anyone's treasures. How we, as a province and as a society, cope with the disposal of rubbish has received considerable and, perhaps, unprecedented attention during the tenure of our appointment. Consequently, it was not unexpected to find that some of the issues associated with solid waste management (as the experts term it) were discussed by the public in their presentations to us. The disposal of garbage is a subject that is of considerable importance from the standpoint of land use and the landscape. In a more indirect way, it is also a subject connected with land ownership; anyone doubting the validity of that assertion has only to recall the contentious, even vicious, debates that occur when dumpsite locations are under discussion.

Much of the Province's involvement in dealing with garbage at the public sector level is capsuled in the Annual Report for the Department of Community and Cultural Affairs for the year ending March 31, 1988, in this passage at pp. 32 - 4:

> The [Solid Waste] Section is directly responsible for the operation of three regional landfill sites in St. Eleanors, Sleepy Hollow, and Cardigan, and six rural refuse container sites in Queens County. Another thirty-seven (37) community refuse disposal sites are located across the Island, serving areas of the Province not served by the landfills or the Energy from Waste Plant in Parkdale.
>
> Twenty-nine (29) of the sites are managed by Community Councils or by Community Disposal Site Committees, with funding and technical assistance being provided by the Department.
>
> Two of these sites, Souris and Tignish, have unique agreements between the Department, the community and private contractors to provide management services at the local disposal site.
>
> Two sites, Wood Islands and Murray Harbour, were closed in 1988 after full consultation with the communities involved. The Community Management Committee for the Belfast area felt that two sites in their district were sufficient and they could use their resources more economically by eliminating the site at Wood Islands. In the case of the Murray Harbour-Murray River area, a new site was constructed in the Murray River area. This new site is unique in that no burning is allowed and it will be run as a small sanitary landfill test project.
>
> Staff continues to provide necessary management at the other eight (8) sites although preliminary work has begun to convert these to the community management system.
>
> Approximately forty-five (45) complaints involving the use of private dumps for household garbage, manure storage, fish offal, and similar environmental problems involving municipal solid waste were investigated, with most being resolved in a constructive manner. A total of 142 permits were issued to individuals under the disposal permit system for special waste treatment and/or disposal at the three regional landfills.

> The Section represents the Department on the operating committee for the Energy from Waste Plant (EFW) located on Riverside Drive in Parkdale. The Department currently pays a tippage fee of $25 per tonne of garbage treated at the Energy from Waste Plant. The remaining 45% of the yearly revenue for the EFW is received from the sale of steam to the Queen Elizabeth Hospital, Hillsborough Hospital, and the Sherwood Home.
>
> The Energy from Waste Plant serves a population of approximately 45,000 people in the greater Charlottetown area and treated some 32,000 tonnes of municipal solid waste (MSW) this year. This volume of MSW means that for almost eight (8) months of the [*sic*] year the Energy from Waste Plant is at or near capacity of 99 tonnes per day.
>
> On a broader scale the staff has been involved with the Energy Corporation in an extensive study of the existing waste management system on Prince Edward Island, and how this system can be improved to better handle the municipal solid waste generated in the Province, while obtaining the maximum amount of recoverable energy through the disposal process.
>
> In order to keep abreast of new developments, both in technology and regulatory considerations, the Section represents the Province on the National Waste Management Committee established by the Canadian Council of Resource & Environment Ministers (CCREM). The Section was also represented at the 10th Canadian Waste Management Conference held in October in Winnipeg, Manitoba.
>
> The Section is committed to keeping pace with the changing technology and meeting the increased public demands to provide efficient and environmentally sound disposal methods for P.E.I.'s Municipal Solid Waste.

The current public perception is that garbage has become a major societal problem. As a legacy of affluent lifestyles, population growth and the "disposal" trend of the past two decades, the volume of garbage being generated has combined with the environmental concerns associated with its disposal to bring garbage issues to the forefront. Increasing disposal costs together with difficulties in locating adequate landfill sites for the future have been among the forces driving this garbage crises in many jurisdictions. While proposed solutions have been many and varied and the focus of the debate has been on a broad collection of issues, much of the public perception now seems to have settled on plastic as a major culprit. Recycling of common consumer disposals - principally paper and, to a lesser extent, glass and metal products - have been widely touted as remedies. While these aspects of the whole multi-faceted garbage problem are commendable and do serve to remind all consumers that the actions of each individual can play a key role in meeting the challenges presented by garbage today, we are of the view that much more must be considered before we endorse or reject many of the suggestions made to us by members of the public.

Is garbage disposal now a problem in Prince Edward Island? What is the cost of garbage disposal? Are we experiencing a scarcity of suitable landfill sites? Questions such as these must be considered with care, for we must not allow the problems or solutions associated with more urbanized and/or industralized areas to be assumed to be the same as ours. Moreover, it is necessary to ensure that solutions which are feasible elsewhere are not really more expensive forms of garbage collection and disposal in our mileau.

The subject of garbage seems simple; it is not. The complexity of the issue was aptly illustrated by a recent article in *The Atlantic Monthly*. "Rubbish!" by William L. Rathje (December, 1989, pp. 99-109) should be required reading for anyone involved in decision-making in relation to garbage. Whether one agrees with the author or not, his perspective is worthy of considerable thought for he has spent much of his professional life doing what few, until recently, have done: he *studied* garbage. For this reason, we wish to mention a few of the salient viewpoints expressed in his essay.

Rathje, by his own admission, has been involved in "The Garbage Project" at the University of Arizona for almost two decades, a project involving "looking at landfills and at garbage fresh out of the can". His long-standing professional interest has led him to conclude that "our garbage woes turn out to be serious - indeed they have been serious for more than a century but they are not exceptional, and they can be dealt with by disposal methods that are safe and already available. *The biggest challenge we will face is to recognize that the conventional wisdom about garbage is often wrong.* [Emphasis added]"

The second major point that the author makes, what he refers to as "an important truth about garbage", is expressed in this statement:

> There are no ways of dealing with it that haven't been known for many thousands of years. These ways are essentially four: dumping it, burning it, converting it into something that can be used again, and minimizing the volume of material goods - future garbage - that is produced in the first place ("source reduction," as it is called). Every civilization of any complexity has used all four methods to varying degrees.

The current thrust of the environmental movement urges the public to think of the three R's - reduce, re-use and recycle. This is only a shift in emphasis from the four ways of dealing with garbage, for if items cannot be re-used or recycled or if there has been no "source reduction", then the alternatives are dumping and burning.

In one of the most interesting sections of his essay, Rathje discussed the findings that resulted from researching a collection of American landfill sites:

> The physical reality inside a landfill is considerably different from what you might suppose. I spent some time with The Garbage Project's team over the past two years digging into seven landfills; two outside Chicago, two in the San Francisco Bay area, two in Tucson, and one in Phoenix. We exhumed 16,000 pounds of garbage, weighing every item we found and sorting them all into twenty-seven basic categories and then into 162 sub-groupings. *In those eight tons of garbage and dirt cover there were fewer than sixteen pounds of fast-food packaging; in other words, only about a tenth of one percent of the landfills' contents by weight consisted of fast-food packaging. Less than one percent of the contents by weight was disposable diapers. The entire category of things made from plastic accounted for less than five percent of the landfills' contents by weight, and for only 12 percent by volume. The real culprit in every landfill is plain old paper - non-fast-food paper, and mostly paper that isn't for packaging. Paper accounts for 40 to 50 percent of everything we throw away, both by weight and by volume.*

> If fast-food packaging is the Emperor's New Clothes of garbage, then a number of categories of paper goods collectively deserve the role of Invisible Man. In all the hand-wringing over the garbage crisis, has a single voice been raised against the proliferation of telephone books? Each two-volume set of Yellow Pages distributed in Phoenix last year---to be thrown out this year---weighed 8.63 pounds, for a total of 6,000 tons of wastepaper. And competitors of the Yellow Pages have appeared virtually everywhere. Dig a trench through a landfill and you will see layers of phone books, like geological strata, or layers of cake. Just as conspicuous as telephone books are newspapers, which make up 10 to 18 percent of the contents of a typical municipal landfill by volume. Even after several years of burial they are usually well preserved. During a recent landfill dig in Phoenix, I found newspapers dating back to 1952 that looked so fresh you might read one over breakfast. Deep within landfills, copies of the New York Times editorial about fast-food containers will remain legible until well into the next century. [Emphasis added.]

Not only are these findings somewhat at variance from the problems being identified now in the popular debate on garbage, but, in addition, Rathje suggests that biogradation of garbage is not necessarily an ideal goal.

> ..., the notion that much biodegradation occurs inside lined landfills is largely a popular myth. Making discards out of theoretically biodegradable materials such as paper, or plastic made with cornstarch, is often proposed as a solution to our garbage woes (as things biodegrade, the theory goes, there will be more room for additional refuse). Laboratories can indeed biodegrade newspapers into grey slime in a few weeks or months, if the newspapers are finely ground and placed in ideal conditions. The difficulty, of course, is that newspapers in landfills are not ground up, conditions are far from ideal, and biodegradation does not follow laboratory schedules. Some food and yard debris does degrade, but at a very, very slow rate (by 25 to 50 percent over ten to fifteen years). The remainder of the refuse in landfills seems to retain its original weight, volume, and form. It is, in effect, mummified. This may be a blessing, because *if paper did degrade rapidly, the result would be an enormous amount of inks and paint that could leach into groundwater.*
>
> *The fact that plastic does not biodegrade, which is often cited as one of its great defects, may actually be one of its great virtues.* Much of plastic's bad reputation is undeserved. Because plastic bottles take up so much room in our kitchen trash cans, we infer that they take up a lot of room in landfills. In fact by the time garbage has been compressed in garbage trucks (which exert a pressure of up to fifty pounds per square inch on their loads) and buried for a year or two under tons of refuse, anything plastic has been squashed flat. In terms of landfill volume, plastic's share has remained unchanged since 1970. And *plastic, being inert, doesn't introduce toxic chemicals into the environment.*
>
> *A new kind of plastic that is biodegradable may in fact represent a step backward.* The definition of "biodegradable" plastic used by most manufacturers focuses on tensile strength. Plastics "totally" degrade when their tensile strength is reduced by 50 percent. At that point - after as long as twenty years - a biodegradable plastic item will have degenerated into many little plastic pieces, but the total volume of plastic will not have changed at all. The degeneration agent used in biodegradable plastic, usually mostly cornstarch, makes up no more than 6 percent of a biodegradable plastic item's total volume; the 94 percent that's left represents more

> plastic than would be contained in the same item made with nonbiodegradable plastic, because items made with biodegradable plastic have to be thicker to compensate for the weakening effect of the degenerating agent.

The problem that Rathje identifies with respect to landfill sites is that they were originally designed with a second goal to reclaim acres of otherwise "waste" land. Consequently, the locations once considered ideal "were the very places that most scientists now believe to be the worst places to put garbage: along rivers and wetlands. It is in unlined landfills in places like these that, not surprisingly, the problem of chemical "leachates" has been shown to be a matter of grave concern". Rathje is of the view that areas where the watertable is high "should never have another landfill". Otherwise there can be safe landfills "even if those landfills must hold a considerable amount of hazardous household waste such as motor oil and pesticides".

The obstacle is, of course, cost. Cost is a factor that cannot be overlooked in the present day debate on garbage. In "Learning to live with leftovers", a 1989 article in the *Globe and Mail* by Carey French, the garbage situation in Burlington, Ontario was discussed at some length. Burlington, with a population of 118,000 (not all that much different in total from that of Prince Edward Island) was paying $2.50 per tonne to dispose of its garbage in 1974. Currently, the rate is $83.50 per tonne and the price for 1990 was projected to be $111 per year. There, a privately operated garbage terminus compacted up to 900 tonnes of trash per day. A project that allowed hazardous waste to be dropped off once a month collected 18,184 litres of paint, corrosives and motor oil but it was estimated that this was "996,822 litres shy of the total chemical and toxic products discarded by Burlington households last year". The cost, again, was staggering: "A $25 can of paint costs up to $80 to destroy", French reported.

The price tag for garbage disposal in the Province of Prince Edward Island could be ascertained by way of some estimate but the mixed involvement of province and municipalities, together with the intermingling of services at the departmental level do render this chore a difficult one. The Annual Report for the Department of Community and Cultural Affairs for the year ending March 31, 1988, for example, indicated the sum of $801,897 as expenditure for "provincial solid waste" and a further sum of $207,025 as expenditure for "community dumps". Neither of these statistics, however, include the "administration" component that applies to these and a variety of other services. Moreover, nearly $5 million was provided by way of municipal grants and no doubt some fraction of that was dedicated to dealing with garbage. A further $73,601 was expended in relation to "derelict cars/dilapidated buildings". Again, the administration component was not included and this expenditure is offset by revenue that totalled $45,358, a figure that we assume relates to the sale of the scrap metal and/or other elements of this recycling project.

Much of the current debate on garbage issues focuses on environmental effects of solid waste management practices. It has frequently centered on numerous modern products and behaviours and what effects these have on nature's elements--land, water, wildlife etc.---over time. Our brief references to the Rathje essay suggests the conventional arguments are open to challenge. This is not to say who is right, but merely to illustrate the complexity of the arguments.

Consider, for example, the common local practice of recycling bottles used for beer and soft drinks. While this has been lauded as environmentally sound, we wonder if the benefits have been balanced against other environmental costs---the volume of water used to clean these bottles for re-use, the cleaning agents and waste water that are generated by the process and so forth. Is it better to have centralized solid waste management facilities that are environmentally sound at a cost of burning fossil fuels to transport garbage to these facilities or decentralized sites that lack both the transportation component and the sophisticated safeguards of one centre serving a large population? Should garbage be burned which presumably has some air quality costs or should it be buried which presumably has water and/or soil quality costs?

We do not feel that we have sufficient information available to us to evaluate many of the issues surrounding solid waste management. To obtain such information involves the collection and analysis of local data involving consumption habits and the disposal of garbage, as well economic and environment information on both existing practices and alternative ones. For example, given the lower wage rates, average salaries and other economic indicators, it may well be that Islanders generate less (or different) garbage than residents in more affluent parts of the country. On the other hand, the discarding of potato culls might be a factor in considering garbage disposal needs in this province, but is unlikely to be a concern in urban centres. It may well be more prudent, for instance, to burn newspapers and thereby generate heat than to stockpile and transport them for use in recycled paper projects. Moreover, it would appear to us that to some extent, the answers to resolving garbage issues would not necessarily be conclusive. It could well be that solutions entail a balancing to determine which course of action is the lesser or least of two or more "evils".

For these reasons, we confine our observations, findings and recommendations essentially to the aesthetic dimensions of garbage. In a nutshell, we are primarily concerned about solid waste management in the context of litter.

It was from this perspective that certain problems relating to garbage were brought to our attention in the course of our public hearings. Some of these issues related to the location of a particular disposal site and/or the aesthetics around it. We took the opportunity during our individual tours of the Province to visit a number of local disposal sites. While some of these could benefit from more care or supervision and/or from additional natural camouflage, we realize that such sites are rarely spots of beauty under the best of conditions.

We could suggest continued or accelerated vigil on the part of the Province in this regard. However, we stop short of making any recommendation to this effect, for problems of this nature tend to be localized and temporary. Once a disposal site offends the citizens it serves, they appear prompt to demand remedial action, and, although the results may not be totally satisfactory to everyone, the search for a solution sufficient to appease much of the discontent is generally forthcoming. We do not feel that we could make any recommendations that would be more constructive or further enhance matters as they now stand.

A second aspect of the "garbage issue" raised at our public hearings was the identification of certain specific concerns which we do wish to comment on in a more detailed fashion.

One of the most obvious aspects of garbage that can and has been attacked through recycling is that of derelict cars. The initial program, commenced more than a decade ago, generated considerable controversy at the outset. The benefits, however, were soon realized in the clean-up of the landscape that resulted from this massive, Province-wide effort.

Repeatedly, in the course of our public hearings, this program was applauded and numerous presentations asked to have the program re-instituted or accelerated. Those who called for re-institution of the program were unaware of its continued availability. The few who were aware of its ongoing nature felt the present scope of the program was not sufficient to keep up with demand.

To determine whether these public perceptions were valid, we examined the information provided by the Department of Community and Cultural Affairs in its annual reports for the years 1987 and 1988.

The 1987 Annual Report described efforts in this regard at page 27 in these terms:

> In 1987, approximately 1851 vehicles were hauled to the 17 provincial storage sites by 3 haulers. Approximately 2345 tons of crushed vheicles were shipped from provincial sites and 2248 tons were shipped from private yards. . . .

	1986	*1987*
Number of provincial haulers	3	3
Number of provincial storage sites	17	17
Number of private automobile junkyard permits issued	44	43
Cars hauled to provincial storage sites	2285	1909
Crushed cars shipped from province (measured in tons):		
Provincial sites:	2080	2345
Private yards:	1275	2248

The 1988 Annual Report for the Department of Community and Cultural Affairs described efforts in this regard in this passage at pp. 26-7:

> Approximately 2119 vehicles were hauled to the 17 provincial storage sites by 3 provincial contractors during this year, resulting in 1991 tons of crushed vehicles being removed from provincial sites, while an additional 3583 tons were removed from private yards. This [*sic*] resulted in a grand total of 5574 tons of scrap metal being shipped to the mainland. The low tonnage from the provincial sites is due to the crushing being limited to 6 yards out of a total of 17. The tonnage for the remaining 11 yards will be shown in the 1989 annual report. . . .

	1987	*1988*
Number of provincial haulers	3	3
Number of provincial storage sites	17	17
Number of private automobile junkyard permits issued	43	38
Cars hauled to provincial storage sites	1909	2119
Crushed cars hauled from Province (measured in tons)		
Provincial sites	3489.08	1911.38
Private yards	2465.15	3582.51

[An examination of this information provided an illustration of how difficult it is to obtain statistical information on such a simple matter, for the 1987 annual report indicates some 4593 tons of crushed cars where shipped from the province in that year, while the 1988 annual report gives a measurement (for 1987) of 5954 tons. There is no explanation for the revision to the data that resulted in a one-third increase in the tonnage.]

We did compare this data with the number of new motor vehicle sales in the Province as reported in Table 24 of the 15th Annual Statistical Review, 1988.

NEW MOTOR VEHICLE SALES
PRINCE EDWARD ISLAND 1982-1988

Number of new Motor Vehicles Sold

Year	Passenger Cars	Commercial Vehicles	Total New Motor Vehicles
1982	2,898	857	3,755
1983	4,100	1,215	5,315
1984	4,761	1,547	6,308
1985	4,559	1,677	6,236
1986	4,270	1,633	5,903
1987	4,084	1,909	5,993
1988	4,099	2,080	6,179

This data indicated that during the seven year period, 1982/1988, an average of 5670 new motor vehicles per year are sold in the Province.

Every new car sold in the Province may not end up as a derelict car in Prince Edward Island. Some new cars may be brought in from other provinces; some cars originally sold here may finish their days elsewhere. And some cars may remain as treasures for many years. Moreover, we understand there are consignments of damaged vehicles being hauled into the province; these would not be reflected in new motor vehicle sales but a proportion of these vehicles would eventually become derelicts in the province. Even with these factors taken into consideration, we are of the opinion that the program which subjects some 2,000 vehicles to recycling each year is not keeping pace with current and future levels of derelict car bodies. As a "ballpark" estimate, this would suggest the current program is only operating at a 50% capacity (although the involvement of private yards may lower this somewhat). The observations being made at the public hearings - that the problem of old car bodies is beginning to mount again - would seem to be a correct impression.

We sought some visual indications of the situation during our individual tours of the Island in August of 1989. In each of the three counties we specifically targeted an experiment in the course of our route planning that meant picking a stretch of road (minimum 10 km.) and making a count of derelict vehicles for the chosen stretch in each county. The assignment called for some discretion, since it is not always easy to determine whether a vehicle can properly be judged "derelict". When in doubt, however, we assumed the vehicle in question was not to be included in the count. Parking in an obscure location, more than the condition of the vehicle, was frequently the key point in determining the vehicle had been abandoned.

The results of this casual survey were mixed. One member of the Commission found few sites in Kings and Prince counties but identified four sites in a 10-km. stretch on Route 232 on the boundary between Prince and Queens Counties. Three of these sites contained a total of 7 abandoned car bodies while the fourth site contained some 40 or 50 derelict cars, trucks and assorted pieces of agricultural machinery. A second member of the Commission found 7 derelict vehicles on a 15-km. stretch along Route 142 in Prince County near O'Leary and about the same situation along Route 17 in the Sturgeon area of Kings County. On the Blue Heron Drive, a total of nine sites were identified including a junkyard in the vicinity of Traveller's Rest that is partially, but inadequately, fenced. A third Commissioner counted 32 derelict vehicles in a 10-km. stretch in Kings County between Dingwell's Mills and St. Charles, but few in Prince and Queens Counties.

Clearly the derelict car program is having an impact in some locales but there are also pockets where abandoned vehicles are beginning to mar the landscape once again.

At the present time, participation in the program is essentially based on volunteerism. The owner of a derelict vehicle is under no compulsion to have the vehicle recycled through the program nor is there any real incentive to do so. Government could enact measures in one form or another that would mandate that vehicle owners participate in the program. For example, it could be required that annual fees be paid by the vehicle owner so long as the vehicle continues to remain in the Province, whether it continues to be operable or not. Or each new registration of a vehicle could require a recycling deposit fee, refundable once the vehicle is brought within the recycling scheme. These measures however may not be necessary if a fresh attack is launched on abandoned car bodies and the public responds appropriately.

We are of the view that more publicity needs to be given to the continued availability of the government program and we would propose two measures that might effect this. The widespread use of computers has made it relatively effortless to add quick messages to correspondence that is widely distributed for another purpose. Bank statements, utility bills and similar items have used this practice effectively for some time. It would be appropriate to have a one-sentence reminder, including a departmental telephone number for more information on the program, included with motor vehicle registration forms regularly forwarded to vehicle owners. (Alternatively, the same information could be provided on the envelope portion of such mailings.)

Secondly, there are a number of services that should be drawn to public attention on an annual basis and the spring season, traditionally the time for clean-ups on the Island, would be the appropriate time in which to do so. A reminder that the derelict automobile program is available and how the public might take advantage of this program is but one example of such a service. Departmental coordination to bring together a number of these components could result in a single issue "clip and save" type of advertisement for local newspapers.

Accordingly, we recommend:

- **THAT the derelict car program be given greater prominence and, in particular, that its availability be more widely publicized and that a renewed effort be made to have public cooperation in removing abandoned car bodies from the Province.**

The *Automobile Junk Yards Act*, R.S.P.E.I. 1988, Cap. A25 defines an automobile junk yard as "premises where three or more unserviceable, discarded or junked motor vehicles, bodies, engines or other component parts thereof are gathered, located, or placed." The legislation provides, in Section 3(2), as follows:

> (2) Every automobile junk yard and the contents thereof shall be entirely screened from view from a highway, public park, public playground, public bathing beach, school, church, hospital, cemetery, residential premises or public hall,
>
> (a) by natural objects; or
>
> (b) by a fence at least seven feet high, constructed and maintained to a height and standard acceptable to the Minister.

Our observations indicate that this provision is not being adequately enforced. Moreover, we found sufficient clusters of three or more abandoned car bodies in locations that would suggest they were not in junk yards operated under ministerial permit.

The penalties for failure to comply with the provisions of the *Automobile Junk Yards Act* are contained in Section 8, which provides as follows:

> 8. Any person who established, causes to be established, operates or maintains an automobile junk yard without having a valid permit therefor, or who fails to comply with the terms of a notice pursuant to clause 6(1)(a), is in violation of this Act, and is liable on summary conviction
>
> (a) for a first offence to a fine of not less than $25 and not more than $500 and in default of payment thereof to imprisonment for not more than thirty days; and
>
> (b) for any subsequent offence to a fine of not less than $100 and not more than $1,000 and in default of payment thereof to imprisonment for not more than ninety days.

These provisions are far too lenient. The penalties prescribed for a subsequent offence would be more fitting as the penalty for a first offence while the penalty for subsequent offenses should be increased.

Accordingly, we recommend

- **THAT the existing provisions of the *Automobile Junk Yards Act* be strictly enforced to ensure that collections of derelict car bodies are removed through the derelict car program or located in a properly licensed junk yard and that automobile junk yards and their contents are entirely screened from view in accordance with the legislation.**
- **THAT the penalties in the *Automobile Junk Yards Act* be amended so that the fine for the first offense is not less than $100 and not more than $1000 (with imprisonment of not more than 30 days in default of payment) and so that the fine for the second and subsequent offenses is not less than $1000 and in default of payment not less than 90 days imprisonment.**

Our observations with respect to derelict vehicles have led us to the conclusion that abandoned motor vehicles are not the only problem. We found there were many instances of derelict farm machinery and implements being abandoned in such a way that the results are every bit as unsightly as old car bodies. We understand that many farm machinery dealers have restricted their traditional practice of accepting trade-ins on farm machinery with the result that farmers are frequently buying new machinery and retaining unwanted implements and machines. Even though there may be some nostalgic charm occasionally associated with the vision of a traditional hay rake in the midst of a field, abandoned farm machinery usually bears a negative visual impact and efforts should be made to encompass derelict farm machinery and implements in the derelict automobile program. We are of the opinion that the present provisions of the *Automobile Junk Yards Act* are too narrow to include many, if not all, farm machinery and implements within its statutory provisions and that this legislation should be amended to expand its controls to include these within its parameters.

Accordingly, we recommend

- **THAT derelict farm implements and machinery be part of the recycling program now involving derelict motor vehicles; and**
- **THAT the *Automobile Junk Yards Act* be amended to include derelict farm implements and machinery within its provisions.**

During the course of our public hearings, particular concern was expressed with respect to the disposal of hazardous household waste. An earlier collection program was praised but a repeat of this effort was felt to be long overdue. It appeared that the Province, after the initial collection project, had become vague on its plans for the future in this regard.

The Annual Report for Community and Cultural Affairs for 1988 contained a section entitled "Air Quality and Hazardous Waste Section". At pp. 34-35, this stated:

> Several air quality issues were addressed by this section in 1988. Considerable effort was made to ensure asphalt plants were located and operated in accordance with guidelines adopted by the Department in 1985. In one case, it was necessary for the company to install additional scrubbers to reduce dust emissions and to use low sulphur products to minimize odors.
>
> A fish meal plant at Kinross was authorized in June to construct and operate emission control works. Operational difficulties led [*sic*] to the issuance of a Ministerial Order in October requiring the company to cease receiving and processing fish products until the emission control works were certified operational by the company's consultant. The certification had not been received by year's end.
>
> During the year Maritime Electric retained a consulting firm to investigate and recommend methods of controlling acid smut emissions from the thermal power plant in Charlottetown. Based upon tests using magnesium hydroxide the Company plans to install injection equipment in 1989.
>
> Air quality monitoring continued under two federal/provincial joint programs - the National Air Pollution Surveillance Program (N.A.P.S.) and the Long Range Transport of Air Pollutants Program (L.R.T.A.P.), which is chiefly concerned with "acid rain".
>
> The Charlottetown N.A.P.S. station samples sulphur dioxide and particulate matter in the ambient air and provides this information to Environment Canada's national air quality monitoring program. Precipitation (rain) samples are also collected for Environment Canada's program to monitor the long-term effect of acid rain.
>
> The first annual report was issued under the Canada/ Prince Edward Island Agreement respecting a sulphur dioxide reduction program. Emissions are estimated to be less than half the 1994 annual objective of 5,000 tonnes. Conversion of wood to heat and import of power from New Brunswick are responsible for lowered emission levels.
>
> Work was initiated on regulations governing air quality in the Province. A public consultation process is to be conducted prior to recommending the regulations to Cabinet.
>
> *After discussions with the Department, the Canadian Manufacturers Association undertook to survey hazardous waste disposal needs of its members in Prince Edward Island. The results of that survey are now under review by the Section as input for development of a provincial strategy for dealing with hazardous wastes.*
>
> During the year advice was provided to several clients on waste disposal options. In two instances a user was found for unwanted or surplus chemicals. The Department is co-ordinating the shipment of the household hazardous wastes to a destruction facility in Quebec with the waste disposal needs of other agencies in the Province. This will help minimize the cost to each party. [Emphasis added.]

This passage implies that air quality issues were accorded much greater priority than the disposal of hazardous waste. Certainly a provincial strategy for dealing with hazardous wste is now past due.

A series of interviews aired by CBC locally on September 28, 1989, illustrated a prime example of "buck passing" in respect to this serious issue, one to which the public is looking to government for leadership and solutions. The media report began with a householder recounting his approach to the Cardigan landfill site with domestic hazardous waste only to be told by the supervisor of the site that the waste could not be accepted at the location, that he was unaware of where it could be taken and that the householder should return homeward with the waste. On contacting the Department, the media interviewed an official who indicated, repeatedly, that the supervisor of the landfill site had been instructed on how he should answer such inquiries but, when pressed during the interview on the "correct" answer, none was forthcoming. Eventually, the official allowed that the householder should contact the Department for instructions on the proper disposal of this waste. Pressed further, the official acknowledged that if the householder did call, he or she would be told to take the waste back home and store it properly; that the collection program had proved to be quite expensive and that he was unable to say when or if it would be repeated.

We can only hope that such circuitous and meaningless responses to these issues will be speedily remedied now that the Department of the Environment has been established. Without such a response, we are concerned that domestic waste of this type can all too easily become a litter problem - as well as one with more serious environmental effects. If government imposes controls on activities such as the disposal of hazardous waste, it must be prepared to provide the means so that the public can comply.

Accordingly, we recommend

- **THAT the Department of the Environment develop a program on the disposal of hazardous waste and that such a program include both consumer education on what constitutes hazardous household waste products and an immediate and ongoing system for the collection and disposal of this type of waste.**

Over the course of our tenure, we have noted a remarkable public awareness in "garbage issues". In particular, there has been a swift focus on recycling waste with some efforts now being made locally with respect to waste paper and other products through "blue box" collections. In addition, a revolution in the diaper business would appear to be underway. The public has responded in such a way that any attempt we might make to highlight development would render our comments dated, perhaps before our report is submitted. The public focus, however, has been on "re-use" and "recycle", not on "reduce", in this environmental awareness.

As we have indicated earlier, there may be no easy solutions to solid waste management issues. Many of these issues require far more study than we are equipped to provide. Such limitations, however, have not deterred us from a few general comments in this direction and to recommend some course of action in this regard.

It is our observation that the fast-food industry has become a growing menace, if not to our environment from the standpoint of generating quantities of garbage, certainly from the litter perspective. Even with trash receptacles, properties surrounding fast-food outlets appear to battle constantly to keep their properties litter-free. Our tour of the Province found that roadside litter was frequently sourced from fast-food franchises.

Public comment from the Minister of the Environment in late 1989, indicated his concern about this. He suggested a possible solution was the imposition of garbage collection fees. Normally the imposition of fees will result in a reduction in consumption or usage: increase in user costs of energy, for example, has been proven to be a conservation measure. But the imposition of fees based on an escalating schedule of volume or weight of garbage and designed to reduce garbage may encourage illicit dumping practices. Subsequently, the Lieutenant Governor in Council issued Order-in-Council No. EC726/89, which contained Litter Control Regulations made pursuant to the *Environmental Protection Act,* R.S.P.E.I. 1974, Cap. E-8.2, that came into effect on March 1, 1990. Section 2 of these Regulations provided as follows:

> 2. Every owner and operator of an eating establishment that operates as a take-out establishment shall
>
> (a) provide waste receptacles for the purpose of receiving discarded food and food container waste;
>
> (b) ensure that the contents of the receptacle are not disturbed by animals;
>
> (c) empty the receptacles at such frequency necessary to ensure they are not filled to overflowing;
>
> (d) remove and dispose of any litter from the premises daily to prevent litter from being transferred to neighboring property.

We doubt that this measure alone will alleviate either the litter problem or the environment issues presented by fast-food outlets.

Fast-food outlets exemplify the "throw-away" thrust of social attitudes fostered in the past decade or two. Food is served in disposable containers, whether consumed on the premises or elsewhere. Accessory items for the meal are individually packaged but often served as a collective unit so that any consumer not wanting some or all of these supplements simply disposes of them without any use being made of them. Packaging is often bulkier or less biodegradable than other possible substitutes: styrofoam cups are used in lieu of cardboard, for example. The result, hailed as consumer convenience, coincidently reduces labour requirements by replacing certain labour components in the food service with the packaging units. The result, as well, is not only a "disposable" lifestyle but a demand on limited resources.

Fast-food outlets and their customers are the ones causing these concerns and we are of the opinion government should call upon the owners and operators of fast-food outlets to help in finding solutions or face harsh consequences. There are a number of options open to the Province in this regard. Outright bans on disposal food containers, severe financial penalties for littering offences, special taxes on disposable containers and other such measures are among the instruments being used in other jurisdictions to deal with this problem. Each of these, however, means public expense or public inconvenience to deal with a problem largely caused by the irresponsibility of a minority. We are not prepared to recommend more stringent measures until the effect that the new Litter Control Regulations can be evaluated. But we are of the view that the Minister of the Environment should serve notice on the fast food industry that their attention to this problem is under review. In the event satisfactory results are not forthcoming within the next year, we would urge that further measures be implemented.

Accordingly, we recommend

- **THAT the Minister of the Environment review the effect of the Litter Control Regulations after one year of operation and, if littering from fast food sources has continued to be a problem, then the Province of Prince Edward Island should consider the imposition of more stringent measures, such as a financial levy of five (5) cents per item for each disposal container, package or utensil used by fast-food take-out establishments, a ban on the use of certain types of disposable containers, and/or substantially increased financial penalties for littering.**

We see a number of other examples of this "disposable" trend, particularly in the use of paper products. A prime example is postal junk mail. The lobby of the Charlottetown Post Office is daily littered with overflowing garbage cans containing sales flyers and other unwanted mail that has been in consumers' hands only long enough for the recipient to walk across the lobby from post office box to garbage can. In dozens of rural communities the routing of this material to its ultimate disposal is more circuitous and the costs of disposal rests on the public purse - as well as the environment. We submit that reduction, rather than recycling, would be a more prudent course of action.

Accordingly, we recommend:

- **THAT the Province call upon the Government of Canada for measures to reduce effectively junk mail volume.**

Another prominent example of this disposal trend can be readily seen in our daily newspapers. How many trees are sacrificed so that a full page ad can proclaim a savings of 2 cents on a loaf of bread at the local store? Many of these advertisements are printed as "supplements", not as part of the regular newspaper, but on high gloss paper that quickly becomes part of our garbage. We could cite numerous examples of this type of practice. We will content ourselves with but one: a four-page supplement that appeared on October 17, 1989, in four Island newspapers appeared particularly hypocritical. Under the heading "A positive step in the long journey towards a cleaner, healthier environment", a grocery chain used a single page of almost 2 square feet of paper to advertise garbage bags, foam plates and powdered detergent. Part of the advertising space was devoted to a scenic photograph of a stream surrounded by trees. But, we ask, what would this scene look like littered with discarded copies of this supplement a week later? How would it appear once the trees are clear-cut to provide the paper for lavishly advertising these products as environmentally friendly?

Public response to these types of waste have largely centered on projects to collect paper for recycling programs. We understand there has been such a response to blue boxes that nationally there is now a glut of stockpiled used paper and the "problem" lies in generating more demand for recycled paper products. We are of the opinion that reduction should play a role of equal priority to recycling in combatting these problems.

Government, as a prime user of paper products, can and should take a leadership role in this regard. We would expect that Government would be in the forefront in participating in projects to collect paper for recycling programs. In addition, however, we are of the view that Government should review its paper requirements periodically to eliminate waste, an exercise which, coincidentally, could produce measurable streamlining in some procedures. At the same time, Government must do its share in generating demand for recycled papers by establishing internal policies relating to the use of recycled papers. This may require careful study; some office machinery may not be adaptable to recycled paper, for instance. We would anticipate that political personnel and senior officials would set the example in such a project.

Accordingly, we recommend

- **THAT the Province review all its paper requirements with a view to eliminating waste and, wherever possible, participating in paper recycling programs and generating demand for recycled papers. In particular, to demonstrate political leadership, stationery and greeting cards used by the Premier and members of the Cabinet should utilize recycled paper and the practice of widespread circulation of greeting cards at Christmas should be eliminated. In addition, government publications that receive a high public profile, such as tourism literature and annual departmental reports, should use recycled paper, wherever possible.**

We are also of the opinion we should be giving more study and thought to small local industries that could be developed from using recycled products. Would it feasible, for example, to make cardboard eggcrates from recycled paper? Or glassware of some type from recycled glass products? Some of the most creative ideas may well come form young people and, accordingly, we recommend

- **THAT the Province ask the U.P.E.I. Faculty of Business Administration to have students prepare projects that examine potential recycling industries that would be feasible for Prince Edward Island.**

Chapter 23

CHEMICALS

In the Speech from the Throne delivered at the Opening of the Legislative Assembly on February 22, 1990, certain actions were outlined in respect to chemicals, particularly pesticides, in the Province of Prince Edward Island. The relevant passage was stated as follows:

> Prince Edward Island can only build upon its reputation as a supplier of food products by ensuring consumers high quality. In the coming year, My Government will initiate a new Quality Assurance and Food Safety Program at the Food Technology Centre. This program will employ microbiological screening and other pesticide analysis techniques.
>
> My Government also believes that farming practices should be in harmony with our environment. Accordingly a Pesticide Application Training and Certification Program will be designed to ensure the proper and safe use of pesticides. A proper storage depot for unwanted chemicals also will be established.

These are welcome steps in the right direction and, had they not been promised, we would be making recommendations along these lines, for the matter of chemicals was raised again and again in our public hearings as an issue of central concern in relation to land use.

Like many other environmental issues, the subject of chemicals has become a topical one, not just at our hearings, but throughout our society. It is a subject that we feel we can comment on only in the most general of terms. The complexity of the subject is illustrated by one simple statistic: in *Palmer v Nova Scotia Forest Industries* (1983), 60 N.S.R.(2d) 271 (N.S.S.C. - T.D.), a legal case involving fifteen Cape Breton landowners who unsuccessfully sought an injunction to prevent the Nova Scotia Forest Industries from spraying certain forest areas in Nova Scotia with the herbicides 2,4-D and 2,4,5-T, the judge noted that *over 40,000 articles had been written about dioxin and its effects.* Many of these articles were submitted to the court which also had to contend with the conflicting scientific opinions presented by *more than thirty expert witnesses.* Clearly, our entry into the subject area can only be approached in a superficial way. Nevertheless, there are certain aspects of this issue on which commentary must be addressed to government, for the use or misuse of chemicals has consequences for land ownership, land use and the landscape in numerous ways.

The challenge posed by chemicals in our twentieth century environment was brought into focus in 1987 with the publication of *Our Common Future: The World Commission on Environment and Development,* otherwise known as the report of the Brundtland Commission. At pp. 224 - 6, this report to the General Assembly of the United Nations had this to say:

> Chemicals represent about 10 per cent of total world trade in terms of value. Some 70,000 - 80,000 chemicals are now on the market - and hence in the environment. The figure is only an informed estimate because no complete inventory has been done. Some 1,000 - 2,000 new chemicals enter the commercial market each year, many without adequate prior testing or evaluation of effects.

> According to a US National Research Council sample of 65,725 chemicals in common use, data required for complete health hazard evaluations were available for only 10 per cent of pesticides and 18 per cent of drugs. No toxicity data existed for nearly 80 per cent of the chemicals used on commercial products and processes inventoried under the Toxic Substances Control Act. This situation is now beginning to change as governments move gradually from a system of postmarket testing to one of pre-market testing of all new chemicals.
>
> By 1986, more than 500 chemicals and chemical products had been banned altogether or had their uses severely restricted in the country of origin. In addition, an unknown number of chemicals are withdrawn from clearance processes every year in the light of control agency concerns, or are never submitted to national control agencies for clearance. ...
>
> Consumer awareness should be increased. Governments should encourage the establishment of information centres on chemical products used by consumers and strengthen the international networks of information exchange, assessment, and data banks now evolving in the UN and elsewhere. Another essential step is the adoption and enforcement of regulations on the packaging and labelling of chemicals whose use may be potentially harmful, to ensure that clear directions are provided in common local languages. Consumer unions and other non-governmental organizations should take the lead in collecting and distributing comparative risk information on ingredients in consumer products such as cleaning agents and pesticides.
>
> The chemical producer and user industries, as the source of the risks associated with chemicals and as the greatest beneficiary of their use, should bear the responsibility for ensuring (and the liability for not ensuring) that their products meet the highest standards of safety, have the fewest adverse side effects on health and the environment, and are handled with appropriate care by workers and users. This will require the fullest possible disclosure of information about the properties and production processes of chemical substances and their comparative risks, not only to the regulatory authorities but also to the workers, consumers, and residents of the community in which a chemical industry operates.

The Brundtland findings were based not only on a global scale but were encompassing of all chemicals. In the absence of a large-scale industrial, manufacturing and/or mining basis in our economy, it is farm chemicals and the issue of food safety that is the focal point of discussion in relation to commercial usage of chemicals in this Province. While our lack of heavy industrial processing means that many of the chemical controversies that rage elsewhere are not of immediate concern in Prince Edward Island, this narrowing of the dimensions of the subject matter is only one of degree: by 1983, there were some 35,000 pesticide products registered with the United States Environmental Protection Agency. Environment Canada, in its publication Environmental Quality in the Atlantic Region 1985, reported that "the number of pesticides registered for use in Canada has steadily grown from 400 in 1979 to 514 at the beginning of 1985." (The seemingly widespread divergence in these statistics is due primarily to a difference in the definition of "pesticide products" and that of "pesticides" and is not suggestive of a major discrepancy between the availability of pesticides in the two countries.)

While there may be some tendency to focus on agricultural chemicals, at the same time, we must not lose sight of the fact that chemical usage both in the residential sector and in other commercial areas in the Province are equally of concern. Shops for repairing automobiles and boats and those for dry cleaning garments, for example, contain a wide assortment of chemicals that pose a potential threat to our land through improper or unplanned disposal. The cleaning cupboard of the average home, coupled with the incremental effect of individual users, each believing their own deeds are insignficant to the total picture, may yet prove to be the greatest challenge in responding to the Brundtland Commission.

In Canada, the control of chemicals is a shared responsibility between governments. The federal *Pest Control Products Act,* for example, regulates the importation and registration of farm chemicals. This legislation was initially instituted more than 50 years ago when it represented one of the earliest attempts at marketing intervention in order to control a particular class of toxic substances, as well as to prevent fraudlent claims regarding the efficacy of such products. While the Canadian system contains more safeguards than is the case with many countries, Canada does depend somewhat on American testing in the registration of chemicals for use in Canada and it would appear that both nations - and the users of chemical products - rely in some measure on the integrity of testing done for them by private testing agencies and chemical companies. Scandals within the American system a decade ago undermined public confidence in this process, leaving both Canada and the United States with the challenge of re-examining their regulatory processes. Today, it would appear that growing public concerns, combined with a number of "shocks" to the system - food safety issues, as well as accidents that have included chemical leaks, spills and fires - have prompted more stringent control measures in order to further public and user health and safety.

In Prince Edward Island, both producers who rely on chemicals for agricultural production and their customers who purchase food products are reliant on the federal system of controls to ensure public health and safety. They are equally at the mercy of the knowledge and integrity of chemical companies to provide clear and accurate instructions on the proper use and storage of their products.

Other industries, as well as agricultural producers and the general public, may be the unwitting victims of chemical use or abuse. Two examples of chemicals adversely affecting aspects of our fishing industry were cited in the Study Paper, *Pesticides in Canada: An Examination of Federal Law and Policy,* published in 1987, at pp. 12 - 13:

> Endrin, a chlorinated insecticide used primarily on potatoes and grains in the Maritimes, has been found in concentrations in Prince Edward Island estuary sediments very similar in magnitude to endrin residue concentrations in southern latitudes where the chemical has been used extensively. However, the quantity of endrin used in the Atlantic [*sic*] provinces is unknown. Fish kills in Prince Edward Island from endrin have resulted from improper agricultural handling of the pesticide. Endrin is extremely persistent, bio-accumulates and can affect the liver and central nervous system.
>
> ....

> Studies in 1980 indicated that fenitrothion, an organophosphate insecticide used for the control of forest pests, particularly the spruce budworm, has the potential to contaminate at trace levels, shellfish including clams, mussels and oysters, over a widespread area of the Maritimes. Shellfish in areas as far as fifty kilometres from sprayed areas were found to be contaminated. Significantly high, if transitory, contamination levels were evident the closer shellfish were found to sprayed areas.

While many aspects of chemical control are within federal jurisdiction, there are matters that do fall within the Province's domain. The *Pesticides Control Act*, R.S.P.E.I. 1988, cap. P-4 is the key piece of legislation in Prince Edward Island in relation to many chemicals being used in the Province. At the present time, this legislation is under the jurisdiction of the Department of Agriculture, even though the chemicals brought under its control may be used in forestry and for highway maintenance as well as by householders.

While it is not clear how the *Pesticides Control Act* will interact with the powers now accorded to the Department of the Environment under the *Environmental Protection Act,* R.S.P.E.I. 1988, Cap. E-9, members of the agricultural sector may continue to see the Department of Agriculture as the proper jurisdiction for the *Pesticides Control Act*. Should it remain there? If producers are to convince the public of the integrity of the system as it relates to food safety, it can be argued that the regulation and enforcement of the control system needs to rest outside the department whose central focus is enhancing agricultural productivity. Removing the legislation into the ambit of the Department of Environment would generate a more balanced perception of what are otherwise seen to be conflicting or competing interests. On the other hand, continued responsibility for the *Pesticides Control Act* in the Agriculture Department does have some advantages, in our opinion. The use of pesticides is very much tied to agricultural production and the expertise and facilities for dealing with production problems are integral components of the Agriculture portfolio. The benefits of informational links with Agriculture Canada, the Research Station, Experimental Farm and the Veterinary College could be lost or, at least, fragmented if a shift were made to another department at the provincial level. Moreover, the major clientele - both for advice and for providing information to government - are producers who have established rapport with agricultural officials. If the thrust of future government action is to emphasize public education components, as we think it must, we see the Agriculture Department better positioned to deliver such a program to and for producers.

For these reasons, we are not prepared to recommend that the *Pesticides Control Act* be removed from the jurisdiction of the Department of Agriculture. At the same time, the Department of Agriculture must recognize that its role in the regulation and enforcement of this legislation calls for its adoption of a stern posture in controlling food safety. If the Department is unwilling to create an appropriate balance between producers' interests and those of the general public, then it must be willing to forego its responsibility for pesticides control to a department with no perceived interest in enhanced agricultural production capabilities.

The past performance of the Department of Agriculture has led us to question how it has perceived its role in pesticides control. The situation with respect to aldicarb illustrates the point. *Environmental Quality in the Atlantic Region 1985*, at page 56, outlined concerns at that time in respect to the use of that particular product. It was stated:

> Agricultural pesticides represent a diffuse source of groundwater pollution that can have serious consequences in relation to the potability of water. In P.E.I., the insecticide aldicarb, which is extensively used in the potato industry, has been detected in domestic wells. It is one of the most acutely toxic agricultural chemicals on the market. Its high solubility and low adsorption to soil particles can cause it to leach through the soil into groundwater. During the 1983 growing season in the province, 50,000 to 100,000 kg were used at a rate of 18-28 kg/ha. Studies indicates that aldicarb persists in some wells, suggesting that degradation can take several years. Although contamination is not at levels considered harmful to human health, its presence is indicative of a potential hazard. A study is now being undertaken by EPS to determine if other water soluble, systemic insecticides are contaminating ground and surface waters in P.E.I.

The use of aldicarb was banned in the Province in the spring of 1989, following a request of potato producers and their organization. *It is small comfort to public confidence in the regulatory system when leadership in the enforcement of pesticides control measures comes from those being regulated, rather than the regulators.*

If food producers and the Government of Prince Edward Island are anxious to ensure the public perceives a sincere effort is being directed towards food safety, then accurate data on chemical usage is essential. Should, for example, a crisis in public confidence arise with respect to a particular chemical used in the potato industry in some regions, wary consumers are less likely to accept vague reassurances on the infrequency of usage in this Province. Precise data, collected over the years, that enable Government to say with confidence how little is now being used or how many years have passed since the chemical was used can be far more persuasive. This, of course, can be a double-edged sword in the event a problem arises with a chemical in widespread usage. But only accurate data will enable Government and producers to know the magnitude with which any problems that occur in the food industry impinge upon the local situation.

At the same time, accurate data would enable producers and public officials to know which of the many thousands of products they need to focus their attention and awareness.

From the standpoint of those who argue that chemicals are an essential ingredient in the modern agricultural industry, we would remind these proponents that public fears about food safety can wipe out an industry literally overnight. We have witnessed two major examples of this (in relation to grapes and apples) within the past year. The Island's own mussel industry also serves as a lesson, although its recovery may have been more rapid than what could be the scenario in a future crisis evolving around public confidence in food safety arising in this Province.

We hasten to add that such a disaster may occur even if public fears are groundless. Widespread negative publicity that circulates bad news with alarm but soft-pedals good news can taint the viability of a marketing scheme for a long period of time.

A chemical scare in any portion of the food-producing sector of our society tarnishes the whole industry, even though the impact may be minuscule in this Province. We need to emphasize that a chemical scare involving a *single* potato can have catastrophic consequences. For a Royal Commission to suggest this, perhaps a decade ago would serve only to destroy the credibility of the Commission. Today, given the events we have witnessed in food safety issues in recent months, we feel it would be irresponsible of us not to bring this point to the attention of Government and, in turn, to urge that all food producers in the Province, particularly potato producers, understand what is at stake.

While no formula can ever be devised that will guarantee freedom from such a difficulty, this fact alone should not allow government or food producers to ignore the problem. Instead, government and the many interest groups and organizations concerned with food production must be cognizant that food safety measures are only as strong as the weakest link in the system.

Throughout our hearings, producers and farm organizations told us of their awareness and care in dealing with agricultural chemicals. We do not doubt their sincerity or their knowledge. Concurrent with our Commission's tenure, however, there was at least one reported incident of improper disposal of farm chemical containers, another of water contamination by an agricultural chemical and a third of improper storage. These examples suggest there continue to be weak links in the system.

Those weak links must continue to be strengthened. It is easy, for example, to say that so long as instructions on the label are followed, the use of farm chemicals does not pose a problem. Whether this is true in respect to the use of an individual product becomes immaterial if the user is unable to read - and the percentage of adults who are categorized as functionally illiterate in this Province suggests a substantial proportion of perhaps 20% - 25% of chemical users would be unable to follow labelling instructions. Users who are unable to know the instructions are obviously weak links in the system and they must be taken into account in any meaningful program to ensure food safety.

Analogies have been made from time to time between the drug industry and the farm chemicals industry. Both are cited as examples of products that can be - and have been - responsible for many benefits to society, while, at the same time, their products are capable of inflicting much harm. There are other parallels, not so frequently mentioned. While both industries are subject to public regulatory controls dealing with such matters as testing and registration requirements, there is a considerable divergence in the control mechanisms used at the distribution level. Many drugs are carefully controlled, such that ultimate distribution to the consumer is dependent upon one and frequently two professionals who have years of training in scientific subjects. By contrast, chemicals which, by definition, are intended to be poisonous to selected organisms and are intended to be applied to land or water and, therefore, can easily become part of the food chain can be purchased and used by anyone. Surely this is a formula for a disaster waiting to happen.

To what extent are pesticides used in Prince Edward Island?

The problem in obtaining data on usage was identified in *Pesticides in Canada: An Examination of Federal Law and Policy,* where it was noted. at pp. 7 - 8, that it was difficult to determine the "total picture regarding pesticide use in Canada". "Moreover, despite recent attempts by some provinces to determine exactly which pesticides are used, by whom, how frequently, at what application rates, on how much acreage, where and in what quantities information of this type does not appear to be systemically available nationally". Annual pesticides sales surveys conducted by Statistics Canada were discontinued in 1977.

The Prince Edward Island Department of Agriculture annually publishes a compilation of *Agricultural Statistics.* Although more than 50 tables of data are provided, the only indicator on the usage of farm chemicals found in either the 1986/87 or 1987/ 88 editions is within financial data on farm operating expenses and depreciation charges. There, the amount spent annually on farms for pesticides is listed as one component of "other crop expenses" - a category that also includes "nursery stock, irrigation, containers, seed and twine."

Confusion on this issue is exemplified by some illustrations. In *Environmental Quality in the Atlantic Region 1985,* at page 112, it is stated:

> Approximately 220,000 kg of agricultural pesticides were sold in New Brunswick in 1983, and a *survey of retailers indicated that 149,000 kg were sold in Prince Edward Island in 1982.* Similar data are unavailable for Newfoundland and Nova Scotia. *Fungicides* such as mancozeb, captan, and chorothalonil *represent the largest quantities sold in Prince Edward Island* and New Brunswick, *followed by the herbicides* dinoseb and diquat, and *the pesticides phorate, disulfoton, carbofuran, and aldicarb.* [Emphasis added]

Yet, at page 56 of the same publication, it used figures of "50,000 to 100,000 kg" as being the amount of aldicarb used in Prince Edward Island for the 1983 growing season. This would imply that somewhere around one-third or two-thirds of all agricultural pesticides used in the Province was this particular insecticide!

Other statements in *Environmental Quality in the Atlantic Region 1985*, particularly at page 113, clearly implied common usage of pesticides as part of farming practices, particularly in the potato industry.

> In the Atlantic region, potatoes receive the largest amounts of pesticides, followed by tobacco, fruits and vegetables, corn and grain. Pesticides applied to potatoes include insecticides for the control of 4 major insect pests (Colorado potato beetle, potato fleabeetle, potato leaf hopper, aphid), herbicides to control weed competition, and up to 10 applications of fungicides to prevent early and late blight. In comparison, grain crops usually receive early applications of insecticides and fungicides to protect seedlings.
>
> Agricultural lands in Canada currently receive 15 times more insecticide than forests. The heavy use of insecticides has resulted in the major global problem of pests developing a resistance to the pesticides used. The number of insects and other arthropods that are resistant to insecticides has grown from 224 in 1970 to 428 in 1980. Thirty-five plant diseases are now also resistant to pesticide treatment.

On the other hand, when the Environmental Assessment Review Panel, assessing the fixed link, posed a question on cumulative effects, the *Supplement to the Bridge Concept Assessment*, dated December 15, 1989, responded in these terms:

> *Question M-1(a), Page 9*
>
> Please provide a more comprehensive discussion of potential cumulative effects. Such discussion should include, but not be limited to the following:
>
> a) Effects on the carrying capacity of potable groundwater resources in the project area, under the stress of additional demand resulting from the fixed crossing, as well as intrusion of salt water as a result of rising sea levels and/or contamination from agricultural chemicals.
>
> ....
>
> Cumulative effects of many pesticides is not yet fully understood and are the subject of current research on Prince Edward Island by Environment Canada.
>
> *Some of the pesticides in use in Prince Edward Island are* phenoxys (2,4-D and MCPA), metribuzin, bipyridils, Paraquot, synthetic pyrethroids, *Aldicarb,* and several fungicides, some of which are highly soluble and persistent in soils. The fungicide Mancozeb is the most heavily used in Prince Edward Island to control potato blight. The introduction of new environmentally safer products and of new application methods, and an increase in public awareness of pesticide associated problems has helped reduce their use.
>
> The major crops under cultivation in the Borden area are potatoes and grain crops. *Pesticides are not in common use* but fertilizers may have important influence on groundwater quality. [Emphasis added]

Since Aldicarb had been banned at the commencement of the preceding growing season, the credibility of the statement is questionable. Moreover, the conclusion that "pesticides are not in common use" seems at considerable variance from what Environment Canada was reporting in its Atlantic Canada study.

These examples serve to show the informational base necessary as a *starting* point for a proper regulatory system is woefully lacking.

Under the Regulations made pursuant to the *Pesticides Control Act,* Section 9 requires certain record-keeping. This provision reads as follows:

> 9.(1) All licensed pesticide applicators shall keep in a booklet in such manner as may be prescribed by the Minister records of each operation involving pesticide use or application, which shall include the following:
>
> (a) the name of the person for whom the pesticide was applied;
>
> (b) the location and dimensions of the area where the pesticide was applied;
>
> (c) the weather conditions, the year, month, day and time at which the pesticide was applied;
>
> (d) the name of the pest or purpose for which the pesticide was applied;

> (e) the chemical or trade name of the pesticide or the Pest Control Products Act (Canada) registration number and the total quantity or the rate of application per unit area of pesticide applied; and
>
> (f) the method of application.
>
> (2) The records shall be kept for a period of not less than three years from the date of application and shall be made available to any inspector.

Section 9, however, is limited to "licensed pesticide applicators". Applicators who are required to be licensed are persons falling under the terms of Section 6 of the Regulations.

> 6. Every person who operates a business or provides a service involving the application of a pesticide shall be licensed as follows:
>
> (a) each person shall demonstrate by means of an examination, either written or oral that he possesses the skills necessary for safe and effective pesticide application;
>
> (b) those persons
>
> (i) who operate ground agricultural equipment for pesticide application for hire or for service to others for a fee, charge or other valuable consideration, to the extent of fifty per cent or more of the annual usage of the application equipment, shall be licensed as Class A applicators,
>
> (ii) who operator or supervise the operation of aircraft, either fixed wing or rotary wing, for pesticide application shall be licensed as Class B applicators,
>
> (iii) who offer a service involving the application of pesticides to stored feed, dwellings or other structures will be licensed as Class C applicators,
>
> (iv) who offer a service involving the application of seed treatment pesticides shall be licensed as Class D applicators,
>
> (v) who offer a service involving the application of pesticides to ornamental vegetation and other non-crop areas other than those set out in sub-clause (iii) shall be licensed as Class E applicators,
>
> (vi) who offer a pesticide application service not set out in subclauses (i) to (v) shall be licensed as Class F applicators;
>
> (c) application for license shall be made to the Minister in such form as the Minister may determine;
>
> (d) all licenses shall contain such particulars and shall be in such form as the Minister may determine;
>
> (e) the fee for any license or renewal shall be $25 and shall accompany each application for license or renewal;
>
> (f) a pesticide applicator license shall be valid from the date of issue and shall expire on December 31 next following its issuance.

In other words, record-keeping is required only of those who provide pesticide application services; chemical users who apply pesticides themselves are not required to keep records. Moreover, there is no provision in the regulations regarding the collection of any data that is kept.

While the Pesticides Control Regulations require that persons operating a business "involving the sale of any pesticide classed under the *Pest Control Products Act* (Canada) as "Restricted" or "commercial" must be licensed, the Regulations were limited solely to provisions regarding obtaining such a license and the storage of pesticides. Order-in-Council No. EC252/90 has amended the Regulations made pursuant to the *Pesticides Control Act* to add to these obligations with the following provision: "It is a condition of every pesticide sales license that the holder hereof maintain a record of sales and supplies on an annual aggregate basis by type of pesticide and that such record be supplied to the Minister on request" [Section 10(7)]. We are of the opinion that this provisions needs to be strengthened so that records and data collection could provide the foundation for a data bank on chemicals used in the province.

Accordingly, we recommend

- **THAT the Province undertake a comprehensive survey of pesticides to determine exactly which pesticides are used, by whom, how frequently, at what application rates, on how much acreage, where and in what quantities, whether used on the farm, in the forest or in residential settings.**

Further, we recommend

- **THAT licensed sellers be required to maintain records regarding the sale or other disposition of pesticides, that these records identify exactly which pesticides are involved (and not just such composite categories of insecticides, herbicides and fungicides), that annual reporting of such data be mandated, and that the Province institute a data bank which would include such information.**

As we have indicated, the present approach in the regulations made pursuant to the *Pesticides Control Act* is to require licensing of various types of "users" who essentially are in the business of providing services to the ultimate "users". In effect, the "professionals" in the business - or at least those whose abilities to handle pesticides safely could be subjected to the judgement of the marketplace - are regulated while more casual users are not. The "casual" users are not necessarily "casual" in terms of the frequency or quantity of chemicals they use, but only in so far as they are not providing a paid service for the application of the chemical products. The persons who, logically, might be presumed to be stronger links in the system are subject to licensing; others are not.

The licensing system regarding pesticide controls must be subject to more stringent requirements. Licensing must become a compulsory requirement for all users of pesticides. Licensing requirements and renewals must require safety training courses. Provisions allowing unlicensed assistants must be eliminated.

This is not to say that all users would be subjected to the same standard of licensing. We urge a system whereby users are licensed for particular products. Certain pesticides that are known to be particularly toxic, for example, would be available only to users that have a license granted only when they have passed rigorous safety training. Other pesticides that pose lesser dangers would be available to users who have a different license, available when they have completed a more generalized program on chemical safety. The potential user of a particular product who is unlicensed - or unlicensed for use of that product - can choose between obtaining the requisite license or obtaining the services of a licensed applicator.

Accordingly, we recommend

- **THAT the Province plan and implement a phased-in system of tighter regulatory controls in relation to chemicals that are used as pesticides and that such a plan include a mandatory licensing system for all users and compulsory safety courses as a prerequisite for obtaining or renewing licenses.**

One component of the debate on chemicals, particularly farm chemicals, centres on the application of these products and the regulatory standards involved. There is considerable controversy over the use of aerial spraying. While aerial spraying of farm chemicals is regulated by a number of provisions made pursuant to the *Pesticides Control Act,* ground spraying is, by comparison, almost wholly unregulated.

We question whether producers using farm chemicals are mindful of the legal rights of adjacent landowners who do not wish to have any residues from farm chemicals applied to their lands. An analogy best illustrates the dimensions of the problem. Suppose Homeowner X is intent upon painting his house using a spraying device. Small drops of paint (let us say the colour is red) fall on places other than his house - his lawn and shrubs are spotted with dots of red. That is his prerogative and, perhaps, his concern. But his neighbour, Homeowner Y, has a legal right to insist that little drops of red paint do not land on *his* lawn, his shrubs, his house. Indeed, if the white automobile that Y owns becomes flecked with red, the annoyance of Y is readily understandable. And, the law offers Y redress against X. So, why does it appear that the users of farm chemicals have difficulty in accepting the annoyance of Homeowner Y when X is using a farm chemical rather than red paint?

The courts have held users of chemicals responsible for any damage inflicted on neighbouring properties. For example, when 2, 4-D was applied to corn crops and damage occurred to an adjacent property where tomatoes were grown, damages were awarded and the Ontario court held that ignorance of the invisible spray drift did not relieve the defendant, a custom sprayer, from liability: *Ruegger v. Shell Oil Co.* (1963), 41 D.L.R. (2d) 183.

The common law provides a number of avenues by which those affected by pesticide usage may find redress in the courts for their concerns. But, adjacent landowners may be reluctant to engage in expensive legal action, particularly where there is no immediate and/or quantifiable injury suffered. Moreover, adversarial proceedings against neighbours may be considered distasteful.

Standards for ground spraying may not, in appropriate circumstances, provide immunity from legal actions but they will provide a code of minimal conduct by which both chemical users and adjacent property owners can determine what is or is not readily acceptable.

Accordingly, we recommend

- **THAT government make users of pesticides aware of their potential liability position under the common law; and**
- **THAT the Pesticides Control Act Regulations provide standards for ground spraying.**

While much of the onus in ensuring food safety has called upon government to set standards and controls that producers would be required to follow, we do feel that the public debate on food safety has lost sight of a number of important factors, and those not associated with the production of food need to be reminded of them. For example, there is the supposition that "natural" is good but "manmade" is bad. This not only overlooks the advances that have been made, both in food production and many other sectors of our society, because of chemical advances but it also ignores the presence of chemicals in food products that occur from nature itself.

The public, it would seem, has also lost some of its perspective in this debate because it has failed to take into account the dimension of "quantity". The chemicals that may be detected in food and may generate a crisis in public confidence over food safety are often detected only in trace amounts. Modern advances in science have meant that detection has moved from discovering parts per thousand or per million, to parts per billion or per trillion. Yet public fear has taken little account of this.

Concentration and/or dosage is a crucial factor in any discussion on chemicals. Table salt is considered a benign food additive in many households, although excess consumption is cited as a health risk. Few members of the public would consider it as a life-threatening poison, but a small consumption of table salt by children can be very dangerous.

Those who espouse the elimination of chemicals from the production of food fail to take into account the fundamental necessity of using chemicals in agriculture today. Certainly it is possible to grow products without chemicals - but not in sufficient quantity to feed an ever-growing world population. Those who choose to adopt the "chemical free" approach will be able to find buyers for their products. But we accept that it is impossible to maintain large farms of several hundred acres in viable production without chemical aids and we see little indication of a trend towards people wishing to return to small holdings. While we have no doubt there is a suitable "niche" for growers who want to practice alternatives to chemical farming practices, we feel it is necessary for government to promote food safety issues among all producers willing to practice agricultural pursuits, with or without the aid of chemicals.

Although the reliance on chemicals in agriculture has essentially developed since World War II, we found it interesting to note that traditional Island agriculture was not without some chemical measures. In ***The Best of the Past: Traditional Sustainable Agriculture in Prince Edward Island,*** the authors, Wayne MacKinnon and Elinor Vass, found that "traditionally, no one thought of spraying to control weeds". But the situation was somewhat different in respect to insect and fungus control. At pp. 11 - 12, they described the situation in these terms:

> The one insect problem most commonly identified in Island agriculture is the Colorado Potato Beetle, and the one method used to control it by traditional means is Paris Green. While the potato beetles were originally either picked or beaten off the potato plants, it was the introduction of the poison Paris Green (potassium cyanide) that marked the first effective steps for their control. Application methods, however, were primitive. Shaken on the leaf from a can, mounted on a hoop and dusted, and later sprayed on from the back of a horse and cart with a hand pump, the application of this insecticide was sporadic at best, although claims to its relative effectiveness were advanced by most farmers. Few farmers were aware of the possible dangerous consequences of these early chemicals.
>
> Blight was controlled by a substance known as bluestone. To prevent burning the tops, it was mixed with lime in a mixture called 4-4-40 (four pounds bluestone, four pounds lime and 40 gallons of water). It was also regarded as effective in combatting blight. Another spray that was quite widely used was called a Bourdeau Mixture (eight pounds bluestone, four pounds lime and 100 gallons of water).
>
> Topkilling of potatoes was rarely carried out. With smaller acreages, farmers would simply allow the tops to be frost-killed or they were mechanically beaten off with a chain-like device. Some farmers used a light application of coarse salt to kill potato tops. As well, since potatoes were stored in cellars, they didn't have to be as "dead". Other potato diseases, such as mosaic, leaf roll, black leg, spindle tuber, and the like, were eliminated by roguing (pulling by hand).
>
> Another spray which was used in orchards was a product derived from the tobacco plant called nicotine40 or Black Leaf 40. It was described as a very deadly poison, but highly effective on orchards.
>
> In general, traditional Island agriculture employed very few chemicals. Some work was begun at the Experimental Farm on pyrethrums and natural predators, but there is little evidence that farmers had much knowledge of these or of such practices as companion planting or natural inhibitors. With the widespread introduction and adoption of chemicals such as DDT, particularly after the Second World War, natural chemicals and mechanical methods were almost completely supplanted.

We sense that some small fraction of today's debate on food safety may be tinged with a touch of nostalgia for the yesteryear. When many more consumers had ties with the land, they knew - and trusted - the producer. Today's consumer frequently depends on nameless, faceless people to raise their foodstuffs; that linkage with the farming sector is gone and, with it, the element of trust is very much diminished. Would consumers today feel more comfortable about food safety if, in place of today's chemicals, however, they found their apples grown with the aid of Black Leaf - 40 or their potatoes brought to market through the use of potassium cyanide?

We feel that government, in cooperation with the agricultural sector and local media personnel, need to put a balanced perspective on food safety issues before the public. We have seen some excellent examples of this already, particularly in the form of a documentary prepared in 1989 and narrated by Ian Petrie for the CBC. More fair reports of this type are needed to combat public chemophobia.

It is necessary, as part of this balance, to stress that chemical safety for our land is not just an issue of concern for farmers. Nor should the burdens imposed by regulatory controls on chemicals used for pesticide control rest exclusively with the farming community. All too often those who would advocate changes for the agricultural sector are willing consumers of chemical products to enhance their own backyards - or front yards, as the case may be. If chemical safety is a priority issue for agricultural producers intent on providing safe foods for human consumption, chemical safety must be of equal importance for non-agricultural users. Nowhere is this more obvious than in the residential setting where children, adults and household pets may become the unwitting victims of chemical misuse. For this reason, we feel it is of particular importance that there be controlling standards in relation to the domestic use of pesticides that are used, for example, for lawn and garden care.

Farmers and other commercial users have numerous "vested interests" that may serve to inhibit the misuse of chemicals. The quantities they must acquire, combined with the price of the product, can be natural deterrents to misuse, whereas the onetime user who requires but a relatively small quantity of the product may be more inclined to misuse under the mistaken philosophy that "if a little is good, a lot is that much better". Further, the one-time or infrequent user is less likely to be attuned to the need for safety or to have the equipment and skills that are acquired by frequent users whose livelihood is dependent upon proper management of these chemical components in their businesses. Finally, the density of human habitation can render the misuse of a chemical in a residential area of far greater consequence in appropriate circumstances.

For these reasons, we think it reasonable that there be certain standards developed in relation to chemical usage on land by homeowners. Where lawns have been treated with chemicals or where ornamental trees and shrubs have been subjected to pesticides, for example, legal measures should require that public notice through lawn signs should warn of these dangers.

Accordingly, we recommend

- **THAT the Pesticides Control Regulations include measures relating to the safe use of chemicals in residential settings.**

The focus on chemical safety must also encompass other users of chemical products aside from pesticides. A growing number of businesses are now using various types of chemical substances. In our discussion on hazardous waste in the Chapter on "Garbage", we have recommended measures in relation to these products once their utility has been terminated by their owners. At the same time, public awareness of the safety issues connected with these products must not be limited to concern about voluntary disposition.

Over the years, we have had a number of public education campaigns aimed at ensuring children and other members of the public are not at risk from ingesting toxic substances. More recently, environmental concerns have been raised to ensure our land, our water and our air are not poisoned. A continued effort in this regard must be part of the ongoing policies of government in its public education campaigns.

We are of the opinion that government must lead the way in educating the public in the "cocktail" effects of certain chemicals. The point may be an elementary one to anyone with a basic knowledge of chemistry but, we submit, a high proportion of the public may not have had any experience in this regard. Combinations of two or more chemicals which, singly, may be relatively benign can produce devastating consequences. Failure to appreciate this can be catastrophic, not only for physical health or safety, but also for our land and the other components of our environment.

In addition, the effects of chemicals through the process of biomagnification are not readily known or understood. Through this process, quantities of chemicals become concentrated in different organisms in the food chain. As a result, for instance, it may be safe to drink water from a source where it is not safe to eat fish that are caught in the same water.

To deal with these matters, we recommend

- **THAT the data bank on pesticides include such information on farm chemicals as compatibilities and incompatibilities, "cocktail" effects, biomagnification and other data that would assist producers in providing and improving their food safety assurances.**
- **THAT the Province continue and accelerate its programs of public awareness and education in connection with the healthy and safe usage of all chemicals, including measures aimed at casual users of both pesticides and household chemicals.**

Many aspects of the debate over chemical usage involve forces over which we may have little or no control. The safety of our food production, for example, is subject to the judgement of a marketplace that spans the world. But there is one component of chemical usage with very localized dimensions that we feel we must single out for particular attention and that is our dependence on chemical fertilizers to enhance agriculture production. Since this issue also involves other soil additives, notably limestone and manure, that are not synthetic chemicals, we have chosen to speak of them together.

Fertilizer and limestone sales for the Atlantic Provinces were reported in the 1987/88 edition of *Agricultural Statistics,* published by the Prince Edward Island Department of Agriculture. Using information supplied by the Atlantic Fertilizer Institute, *Agricultural Statistics,* at p. 46, provided as follows:

Year Plant	Nfld.	P.E.I.	N.S.	N.B.	Total	Total Food Units
Fertilizer						
- Tonnes -						
1988	N/A	N/A	N/A	N/A	147,841	6,744.746
1987	N/A	N/A	N/A	N/A	154,635	6,982,432
1986	3,611	59,386	34,375	47,928	145,199	6,322,680
1985	3,475	60,354	32,326	52,016	148,171	6,472,540
1984	3,517	58,417	34,206	52,376	148,516	6,497,765
1983	3,801	58,021	34,854	48,338	145,014	6,294,648
1982	3,541	58,304	34,073	50,195	146,113	6,327,543
1981	3,717	56,378	33,543	51,896	145,534	6,259,714
1980	4,418	51,714	31,828	51,259	139,219	5,954,651
1979	4,538	59,035	35,110	56,128	154,811	6,622,949
1978	5,958	52,987	34,983	57,141	151,068	6,350,597
Limestone						
- Tonnes -						
1988	8,135	70,939	89,707	97,887	266,668	
1987	7,340	75,321	82,760	98,929	264,350	
1986	3,753	53,010	92,957	67,228	216,948	

An analysis of this data shows that for the nine-year period in which statistics for each province were provided (1978 1986, inclusive), a total of 514,495 tonnes of fertilizer was sold (and, presumably, used) in Prince Edward Island. This averaged 57,166 tonnes per year. In the same time period, Nova Scotia, which is more than 9 times larger than Prince Edward Island, purchased only 305,298 tonnes of fertilizer (33,922 per year on average). Also in the same time frame, New Brunswick, which is more than 12 times the size of Prince Edward Island, purchased less fertilizer - a total of 467,277 tonnes or 51,919 tonnes per year on average.

While fertilizer is used in both agriculture and forestry, it could be argued that the Prince Edward Island requirements for fertilizer is merely reflective of the predominance of agriculture in the land use patterns of Prince Edward Island. Further examination of some statistics, however, suggest that this perspective cannot wholly explain why 38.8% of fertilizer sales in the Atlantic Provinces over a nine-year period were made in this Province.

The *Canada Year Book* of 1988 attributes 48.1% of the total land area in Prince Edward Island to farm land and only 8.9% and 5.7% of the total land areas in Nova Scotia and New Brunswick, respectively, are termed farm land by this source. In turn, this means that Prince Edward Island has less actual farm acreage than either of its Maritime counterparts, each of whom have about 50 -60% more area devoted to agricultural usage than this Province.

The intensive fertilizer usage, we understand, can be understood in the context of the dominant role of the potato industry in the provincial agricultural sector of this Province. The *Report of the Royal Commission on the Prince Edward Island Potato Industry* acknowledged this, at p. 94, by stating: "Potatoes are known as 'heavy feeders' of fertilizers and, while application may vary with the history of the field and the potato variety grown, rates of 800 - 1100 lbs. per acre are common." (This feature of the potato industry would explain why the Province of New Brunswick, which has a large potato sector but slightly less actual farm land than the Province of Nova Scotia, is a much bigger market for fertilizer sales than the Province of Nova Scotia.)

The reliance of Prince Edward Island on fertilizer can also be put in context from another statistical source. The *Canada Year Book* of 1988 points out that census farms throughout the nation used 4.1 million tonnes of commercial fertilizer on 57.2 million acres in a singe year (1985). One-eighth of that aggregate for total usage coincides with the volume of Prince Edward Island fertilizer purchases over the nine years between 1978 and 1986.

The *Report of the Royal Commission on the Prince Edward Island Potato Industry* pointed out that "at present there is insufficient specific crop data on fertilizer use." Citing the 1985 *Business Analyses of Selected Potato Farmers,* that Royal Commission pointed to a cost of $157 per acre for fertilizer and lime, concluding that such applications, together with chemical sprays for pesticides costing an average of $125 per acre, represented a major cost to potato farmers. The Royal Commission also referred to losses incurred from fertilizer runoff that occasion the need for additional fertilizers. At p. 96, the *Report* stated:

> Erosion-related studies conducted by N. Stewart and D. Himmelman on Island test plots over a number of years, showed major losses of up to 40 per cent through run-off of applied fertilizers on plots with 12 per cent slope. Other experiments, carried out by J. M. Sadler at Charlottetown, simulated erosion and indicated yields were significantly reduced, requiring additional fertilizers to make up for the loss.

The data therefore suggests there is intensive use of fertilizer in this Province. Individual users of fertilizer may not be applying any more fertilizer per parcel of land than their regional counterparts. But the collective result for the whole land mass is considerably more intensive, since the cumulative effects of fertilizer residues may have a much greater impact here where such a high proportion of our land base is being farmed and where fertilizer residues have many opportunities to contaminate comparatively smaller water areas.

Expert opinion given to us in the course of our deliberations has suggested that problems arising from nitrates in soils that result in soil degradation (loss of organic content) and the leaching of nitrates and other fertilizer residues into surface and ground water sources present a "ticking bombshell" in the environmental milieu.

Elsewhere in this Report, we have stressed the need for tree belts adjacent to streams, crop rotation and other measures designed to prevent soil erosion and provide other environmental safeguards. We have also recommended the inclusion of conservation covenants as prerequisites for public funding, whether this is in the form of grants, loans or subsidies.

In addition to these measures, we feel that fertilizer and limestone usage requires more comprehensive investigation, with a view towards implementing other provisions that would deal with this issue. While we do not doubt that the agricultural industry is the major user of these soil additives, we are also of the view that other sectors must be examined. Included among these are residential and recreational sectors. As a consequence of such a study, we should not be surprised to learn that standards for the protection of groundwater are necessary, including the designation of watershed areas where the use of soil additives is curtailed or eliminated.

Accordingly, we recommend

- **THAT there be a province-wide compendium of fertilizer and limestone usage prepared and, based on its findings, that standards for the protection of groundwater (including, where necessary, the designation of watershed areas within which the use of soil additives is curtailed or eliminated) be developed.**

Equally important to obtaining more data and standards on fertilizer and limestone usage is a public education program aimed at users of these products. More widespread use of soil testing, for example, may result in a more selective, reduced need for such additives. To what extent is government now being called upon to remedy problems in waterways by altering crossings and other measures when problems could be remedied by less fertilizer or manure run-offs? To what extent are natural fertilizers being wasted because farms have become specialized? Is fertilizer and limestone usage on recreational and residential properties excessive? These are some of the issues we feel need further consideration in the milieu of public education.

Accordingly, we recommend

- **THAT there be more public education focused on the best use of fertilizers and lime and the problems that unwise usage can create for the environment.**

Chemicals must be judged in a balanced context. The Brundtland Commission, at pp. 223 - 4, succinctly stated the "good" and the "bad":

> Chemical products have greatly improved health and life expectancies; increased agricultural production; raised comfort, convenience, and the general quality of life; and expanded economic opportunities. The chemical industry is also one of the most dynamic sectors in most countries, including many developing ones. Yet this industry, together with its products, can have a particularly severe impact on the environment. It has given rise to a host of new problems both of product and process pollution. It continues to generate an increasingly wider range of products and wastes whose effects, especially long-term ones, on human health and the environment are not precisely known. Major accidents have taken place, and the safety record of the industry has been challenged in recent years.

> In a world more and more dependent on chemical products and highly complex large-scale technologies, accidents with catastrophic consequences are likely to increase. Some of the heavy metals and non-metallic minerals, such as asbestos, also pose serious hazards to health and the environment. Various hazardous products and processes are already built into current systems of production and the technological structure of contemporary society, and it will be a long time before these can be replaced with less dangerous, inherently safer technologies and systems. Some highly toxic chemicals that are known to cause cancer and birth defects and have long-term genetic effects are already in the environment in significant concentrations, and may take decades to be diffused.

We need to maintain the visual beauty of our landscape, the productivity of our agricultural economy and the health of ourselves, our children and our surroundings. To do so, we must ensure that we retain a balanced working relationship with chemicals that can serve us well without allowing ourselves to be blinded by either the dangers or the miracles wrought by the inventions of modern science.

Chapter 24

WEEDS

"What is a weed? A plant whose virtues have not yet been discovered."

- Ralph Waldo Emerson
Fortune of the Republic (1878)

The Province of Prince Edward Island is saturated with plants whose virtues have continued to escape mankind. Earlier in this report, we indicate that in the course of our investigation we undertook individualized tours throughout the length and breadth of the Island in order to determine our own impressions and perceptions of the Province after our awareness had been heightened from our public hearings. As a result, we determined that if there was a single, common element that blights the landscape and aesthetics of the Province in all three counties, in urban and rural areas alike, the dubious honour goes, not to old car bodies, litter or any other garbage from manmade processes but to *weeds.*

Perhaps this perception stems, in part, from the time of year we chose for our wanderings: we travelled around between mid-August and early September, that very time on the calendar when weeds which have not been brought under control during the early growing season are now reaching their zenith. But we make no apologies for our timing, since this period also coincides with some of the busiest weeks of our tourist season when the Province, from the aesthetic standpoint, should be looking its best. Moreover, it is at this time of year we celebrate and demonstrate our skills and prowess as an agricultural province with numerous rural fairs and exhibitions. The prevalence of a major weed problem is a contradiction of the image we wish - and need - to portray in relation to the vitality of two of our leading economic sectors.

Weeds have traditionally been portrayed more as an agricultural problem, not an aesthetic one, and there are solid reasons why weed control does present itself as a matter of great concern for farmers. The prevalence of weeds cuts into the quality of their products and the quantity of production. Enormous expenditures, of both time and money, may be required to bring weeds under control and the task may prove to be a thankless undertaking when the weeds refuse to concede defeat. Consequently, weed problems in agriculture have measurable economic effects that, although difficult to quantify with precision, can be ascertained more readily than intangible negatives associated with the quality of landscape.

At worst, certain weeds are known to be toxic and can prove to be injurious to health and safety. Poison ivy, as its name implies, has long been the curse of many recreationalists. But in the farming community, tansy ragwort is more vilified. A recent article in *The Island Magazine* by a respected Island biologist, Dr. Ian MacQuarrie, outlined the threat in this passage:

> By the turn of the century, it [tansy ragwort] was recognized by agricultural authorities as a problem. Today, it can be found throughout the province... . This plant has a long flowering season, from late July on, and may be found in ditches,

> waste places, and, unfortunately, also in hayfields and pastures. The heart of the matter (or, to be more accurate, the liver) as far as humans are concerned is that ragwort is poisonous, a particular problem to cattle and horses... . Ragwort warns off livestock by a disagreeable odour when alive; when cut for hay it becomes more palatable and, thus, more dangerous.
>
> ...[T]he damage is manifested in the animal by loss of appetite, weight, and, often, awareness, culminating in death.
>
> While ragwort (not to be confused with ragweed) is rather common everywhere in the province, it is a particular problem in Prince and King's counties. *The annual death toll is dozens to hundreds of livestock. (For example, Rosemary Curley reported 100 cattle deaths in 1982.) Since not all livestock are autopsied it is difficult to get an accurate total, but the conclusion seems justified that this is a serious weed problem, directly affecting the efficiency of livestock production here.* [Emphasis added]

An unpublished study, prepared in the summer of 1988 and obtained from the provincial Department of Agriculture, examined the ragwort population in West Prince. The data was collected by three sample counts in some 277 fields in 247 separate locations. Results showed counts in the samples as high as 65/m2. The various locations were grouped into some 49 geographical areas: only 6 of these areas were found to be free from ragwort. In addition to the field counts, the survey also noted "there was ragwort along the side of the road in most places in West Prince but in these places counts were not done.".

Ragwort is by no means the only weed posing a serious problem in the province. During our tour of the province, we were particularly alarmed at the proliferation of wild oats in various locations. Without rapid remedial action, the growth of wild oats will soon be a serious problem.

Government, in the Province, has made some attempt to deal with the problem of "noxious" weeds, but the thrust of this has been confined to awareness/education in the farming community. For example, the 1988 Annual Report for the Department of Agriculture contained this passage, at p. 55, under the heading "Weed & Pest Management":

> During the year, the Pest Management Specialist provided support services to crop specialists, agriculture representatives and farmer clients in the area of pest management of weeds and insects. This service included: insect and weed identification; commodity farm calls; staff training seminars; farmer training seminars. . . . A study was carried out to evaluate the effects of chemical weed control in an alfalfa stand established in 1987. Preplant incorporated herbicides have proved to be effective for weed control when establishing alfalfa stands.
>
> The five Tansy Ragwort Control demonstration trials, established in 1985 across P.E.I., were monitored for the last time this year to determine the amount of Tansy Ragwort regrowth in each treatment. Spring application of dicamba and 2-4D gave the most economical control. . . .
>
> During the harvesting of a grain crop in 1987, a field contaminated with field mint was treated with Round-up, a non-selective systemic herbicide. An evaluation of the weed control treatment was carried out this spring and indicated that this treatment gave acceptable control.

Major publications made available this year include: 1988 Guide of Weed Control, .

It is obvious from this passage that the central thrust of weed control has focused on chemical measures, although MacQuarrie's article cites the use of biological control by use of the Cinnabar Moth, first introduced into the Province in 1966, as one form of control which "seems most effective in King's County, but in all areas other forms of control are still necessary. As might be expected, biological control is often highly variable in effect." MacQuarrie pointed out that "once recognized, the plant can be controlled through rogueing (that is, weeding it by hand), crop rotation, or herbicide use."

An attempt to legislate weed control by measures that would create offenses for certain behaviours which spread "noxious" weeds and that provided a penalty of "not more than fifty dollars" was enacted by the Prince Edward Island Legislative Assembly in 1955. The *Weed Control Act,* R.S.P.E.I. 1974, Cap. W-3 allowed the Lieutenant Governor in Council to make regulations, including regulations that would designate plants as noxious weeds and prescribe methods and procedures for the destruction of noxious weeds and weed seeds. This *Weed Control Act,* however, contained a proclamation clause. The legislation was never proclaimed and, in consequence, it was never in effect and no regulations ever came into being.

A second *Weed Control Act,* S.P.E.I. 1987, c. 70, was passed by the Prince Edward Island Legislative Assembly some three years ago as a replacement for its dormant predecessor. It, too, called for control measures for "noxious" weeds that would be designated by regulation. It, too, contained a proclamation section and, until now, it, too, has not been proclaimed.

Weed problems and weed control have traditionally been aimed at those with a vested interest in solutions - farmers and other livestock owners, most notably, but also gardeners and property owners who have pride in their outdoor living spaces. To a large extent, we feel, the focus is not properly centered. Weed problems are not "created" by those with vested interests in weed control. Weed problems are created by other landowners and occupiers who have no vested interest in weed control; it is their neglect that allows wind-borne and bird-borne weed seeds to spread and to propagate on the lands of those who want and need weed control. The costs of weed control are then "third party" costs, passed on to someone who in large measure has not created the problem by someone who has no interest in preventing or curing it.

We find that there is a public interest inherent in weed control. This public interest transcends the costs that weeds impose on our agricultural sector and the negative impacts of unwanted plant life in the landscape.

Today our farming community, in particular, and, more generally, all citizens are under attack from environmentalists and conservationists for the use of chemicals. While we share much of this concern, we think it fair to consider another dimension of this issue. The need to undertake expensive weed control measures would be extensively decreased (dare we say eliminated?) if all landowners and/or occupiers accepted weed control responsibilities. This, in turn, would lessen (or end) the need for using herbicides by members of the farming community and others with a vested interest in horticultural pursuits.

This logic is not as fanciful as the skeptic might assume; we understand weeds are not a problem in at least one European country where responsibility for weed control has been diversified. (However, our attempts to obtain more substantive information on any such program has not produced a timely response.)

Like so many other issues we have addressed in this report, the subject of weeds and their control is not as simple or straightforward as might, at first blush, appear.

Land use is not the sole indicator, for instance, for weed problems. Land ownership and land tenure may be factors not to be overlooked.

The article by Tony Hiss, *Encountering the Countryside,* to which we make reference elsewhere in this report, links weed problems with land speculation. The author, at page 47, traced the transformation from rural to urban in Flushing, New York:

> In 1930, Henry Keil founded Keil Brothers, a major garden center and plant nursery, and because he set up shop in Bayside, on the eastern border of Flushing, he was in a position to watch the unravelling of rural Flushing... . His business is still in the same spot, although the street outside has been enlarged and renamed the Long Island Expressway. The first changes, as he remembers them, were invisible, or nearly so. *Speculators bought up farm properties* near the land where the new highways would run. *This was an invisible change, because in many cases the new owners didn't build on the land for years.* Instead, they installed tenant farmers on a temporary basis, and here *changes began to show, if you looked carefully, because the short-term tenant farmers took less care of the fields they worked, and, as weeds sprouted and were not cut down, the open areas began to take on a raggedy, uncared-for appearance.* [Emphasis added.]

This view was not a new one, for Hiss went on to describe at pages 47 - 50, the findings of urban sociologist William H. Whyte:

> Twenty years ago, in a book called "The Last Landscape", the urban sociologist William H. Whyte conducted the first precise survey of this phenomenon - "an inexorable sequence of events," he called it, which brought about "the defilement" of a beautiful partnership landscape. In the nineteen fifties, Whyte had seen the same processes consume his own favourite landscape in his home country: Chester County, Pennsylvania, twenty miles west of Philadelphia "an unusually beautiful expanse of rolling countryside" that was, he wrote, "to some eyes, and not just my own, the most beautiful in all the country." Speculators, Whyte discovered, were always part of the chain of events: "Much of the *open space* that remained...*was being stockpiled by speculators* for re-sale at a later date. They may have leased it in the interim to a farmer, but often they simply left the land idle. *Soon it would revert to a dense growth of saplings and weeds and poison ivy. Some inhabitants would be reassured by this resurgence of nature but to the practised eye it would be a sure tip-off the area was doomed. Thus does the speculator leave his tracks.*" [Emphasis added.]

Is it mere coincidence that we concluded the weed problem in this Province was worse in King's County where there is the highest proportion of non-resident ownership? We suspect not. This is not to infer that all non-resident landowners are land speculators or that in-province landowners are not immune from land speculation. However, our observations suggest that people tend to exercise weed control, often with very high standards of perfection, in and around their residential properties but they do not always carry this concern with them in relation to other properties they own or occupy.

Weed problems are not confined to the countryside. Urban business premises often exhibit an unsightly fringe of weeds. This seems particularly ironic for these same businesses may be owned and/or operated by people who would not tolerate a dandelion or a daisy in their own backyards. At the same time they often appear unwilling to pay the costs of lawn cutting around their businesses - rendering the straggly fringe of weeds next to a sidewalk or a foundation perhaps more unsightly than if weeds and grass had equal freedom to compete for height.

A poignant example of this neglect during the summer of 1989 was the area surrounding the Farmer's Market on the outskirts of Charlottetown. We would assume that such an establishment would be cognizant not only of the aesthetic detraction caused by weeds but also the problems this negligence was creating for the crops being cultivated in the adjacent land for the Experimental Farm. Another illustration brought to our attention during our public hearings was the situation in front of the main branch of the Post Office in downtown Charlottetown where, after tax dollars were expended in the creation of some attractive flower gardens amidst the concrete entry, the blossoms were forced to compete for months with a vigorous growth of weeds.

While weed problems in urban areas are of a different dimension than those in the countryside, the effect is also different. Whereas weeds in a rural setting are the bane of the agricultural industry, the aesthetic effect may not be unpleasing in some circumstances. To those unfamiliar with plants, a field of flowering weeds may cast a beauty not seen through the eyes of a farmer who sees the same collection in a different light. But in an urban setting, where weeds are contrasted with pavement or concrete, their density might be insignificant but their impact is a signal of careless property neglect.

Solutions to the weed problem are more difficult than the identification of the issue. The use of chemicals to control weeds is often the easiest and most effective answer. But this route has its costs, not the least of which is the questionable advisability of adding more chemicals to the environment, particularly where it is an aesthetics issue that is of foremost concern. Environmentalists would urge that weed control be addressed by rogueing; while this is practical and sensible for small parcels of land, it is not a workable solution for properties of any appreciable size so, by and large, it is not feasible for rural areas where the problem is one of considerable economic consequence.

The private landowner does have one weapon that can be utilized in this battle: the law with respect to private nuisance. While reported cases where nuisance law has been used in relation to weeds are rare, the example presented by ***Anjulin Farms Limited and Graburn v. City of Calgary*** (1978), 10 A.R. 398 (T.D.) is an exception. There, the plaintiff corporation owned approximately ten acres of land within the defendant city - land which was leased to its principal shareholder, the individual plaintiff, who resided on the land. Much of the area was kept carefully in a natural state with more than 100 varieties of wild flowers on it. A noxious weed problem on adjacent municipal land began to develop in 1960 and resulted in litigation 12 years later. The plaintiffs were awarded damages in the amount of $3,100 and an injunction was issued against the City to restrain it from growing weeds! A further weed problem developed elsewhere the following year and, when the dispute came to trial, six years later, the plaintiffs were awarded damages against the City of Calgary in the amount of $12,000 as compensation for the cost of weed control measures and loss of enjoyment of the property. While this civil law route would be available to individual property owners in Prince Edward Island, we do not believe it likely that this option would be used except in rare instances. Consequently, as a means of dealing with the weed problem, the traditional civil law remedies will not provide any realistic answer to ridding the province of weeds.

We are of the opinion that the Province of Prince Edward Island must be in the forefront in the conduct of an immediate *war on weeds.* This campaign must be conducted on a number of fronts.

Weed control measures to obliterate any weeds that are detrimental to the agricultural community must be implemented.

Government must take a leadership role in driving home the message that a nonchalant attitude towards weeds has made weeds everyone's problem. In addition, the government message must point out the economic and aesthetic costs that weeds pose: weeds kill livestock, weeds aid in breeding rodents, weeds are devaluing our landscape, weeds and their control are costly to both our agricultural sector and our environment.

Lands owned by the Agricultural Development Corporation must be managed in such a way that weed control and elimination measures are implemented; its leased lands must be subject to terms and conditions requiring weed control.

In municipal areas, weed control bylaws must be enacted so that vacant lots will not continue to be the growing fields for weeds that many property owners are endeavouring to control. At the same time, further injections of civic pride are needed to ensure that minor weed growths do not provide a mar on aesthetics that far exceeds the actual density of the weed growth. The Province can assist by encouraging municipalities to have such bylaws and by providing sample bylaws to the municipalities.

In addition, we are of the view that government must work in close cooperation with private sector organizations whose purposes include beautification. For example, there may be considerable merit in offering a special award through the Rural Beautification Society for the community which has made the greatest progress over a 12-month period in eliminating weeds with entries viewed in the preliminary round in August and judged 12 months later.

Taking all of these proposals into account, we recommend

- **THAT the Province of Prince Edward Island conduct an immediate war on weeds through a variety of measures, including the implementation of laws to obliterate any weeds detrimental to the agricultural community; the development of a public awareness campaign on the adverse effects of weeds; the implementation of measures to control weeds on public lands, particularly those owned or leased by the Agricultural Development Corporation; the provision of some incentive or award for praiseworthy efforts in weed control in conjunction with any private sector organization(s) dedicated to beautification objectives; and the encouragement of municipal measures to control weeds in areas within municipal jurisdiction.**

Chapter 25

SOIL EROSION AND DEGRADATION

Almost half a century ago, in 1944, Walter Lowdermilk suggested an Eleventh Commandment which he formulated in these terms:

> Thou shall inherit the holy earth as a faithful steward, conserving its resources and productivity from generation to generation. Thou shall safeguard thy fields from soil erosion, thy living waters from drying up, thy forests from desolation and protect thy hills from overgrazing by thy herds, so that thy descendants may have abundance forever. If any shall fail in the stewardship of the land, his fruitful fields shall become stony ground and wasting gullies and his descendants shall decrease and live in poverty or be destroyed off the face of the earth. [Lowdermilk, W., *Palestine: Land of Promise,* New York: Harper, 1944.]

Today there is mounting evidence that the "Eleventh Commandment" is not being heeded by many landowners and users in the Province of Prince Edward Island and that within the provincial government itself there may not be consensus on the magnitude of the problem - or even its existence.

The problem of soil erosion was recognized, briefly, in the 1973 *Report of the Royal Commission on Land Ownership and Land Use* where, at p. 27, the following statement was made:

> With the trend toward fewer, but much larger and more specialized farms has come also a major increase in the size of individual fields and an aggravation of soil erosion problems.
>
> Evidence presented to the Commission gives strong indication that the continued clearing of trees from stream banks, and the removal of all hedgerows is not necessary to the accommodation of modern tractor-drawn farm equipment. It also indicates that these practices have: (a) accelerated the erosion of Island soils from both water and from wind; (b) lowered the water quality of many Island streams through serious siltation, the addition of chemical nutrients, and through lack of natural shade; (c) lowered ground surface growing temperatures; and (d) had a negative effect on the visual and aesthetic quality of Island landscape.

The recommendations made by the 1973 Royal Commission suggested that the problem of soil erosion be addressed by both the Province's Department of Highways and by farmers. These recommendations read as follows:

> 8. a. The Provincial Highways Department should:
>
> (1) take steps to control the erosion of highway shoulders through better design and through continued reseeding practices;
>
> (2) improve the design of highway ditches and run-off control so as to reduce the erosion of farmers' fields.
>
> b. Assistance should be offered to farmers by way of seed or ground cover planting along denuded streams.

While there have been some measures to deal with soil erosion and soil degradation in the intervening years, we are of the view that the situation has not improved and, very likely it has become worse.

Our observations indicated that soil erosion problems attributable to highway construction practices have been taken seriously in many locales. Some highway ditching continues to be left in such a way that soil erosion is almost guaranteed to occur, but we gained the impression that this department had made progress in implementing the recommendation aimed at them by the 1973 Royal Commisison. Moreover, in our public hearings, little critical commentary was directed at highway construction or ditching practices. We would hope that this Department continues to keep apace with appropriate measures to prevent soil erosion, in accordance with the recommendations contained in *A Conservation Strategy for Prince Edward Island* prepared for Executive Council by the Coordinating Committee for Conservation in March of 1987.

Unfortunately, the same degree of praiseworthy responsiveness cannot be attributed in relation to other sectors in either the public or private domains.

The data presented in our discussion of Agricultural Preservation has led us to the disturbing conclusion that the amount of Class 2 land in the Province has declined by 150,000 acres since the 1973 Royal Commisison made its findings, while Class 3 land has increased by 40,000 acres and the amount of Class 4 land has more than doubled. It is unclear to us whether this change is attributable exclusively to soil erosion and degradation or to changing standards and/or the application of these standards to the classification process. If the alteration is due primarily to soil erosion and degradation, the data suggests the province is losing, on average, upwards of 10,000 acres of Class 2 land each year. At such a rate, the present inventory of Class 2 soils would be reduced by some 20% before the turn of the century and all but eliminated in the next 50 years!

Soil erosion was the subject matter of an extensive national report in 1984 when the Senate Standing Committee on Agriculture, Fisheries and Forestry, under the chairmanship of the Hon. Herbert O. Sparrow, published the results of its investigation under the title, *Soil at Risk: Canada's Eroding Future*. The Committee found that productivity priority was taking its toll on soil quality, while economic realities were putting such pressure on the agricultural sector that soil conservation was under a major constraint. The results, as expressed in this report, were chilling: soil degradation is costing farmers in Canada more than $1 billion per year in farm income. "Canada is facing the most serious agricultural crises in its history and unless action is taken quickly, this country will lose a major portion of its agricultural capability," the Senate Standing Committee warned.

Soil at Risk considered this loss from two perspectives: the loss of agricultural land to urban use (a subject we address elsewhere in this report) and soil erosion and degradation. While this subject cannot be relegated to the agricultural sector alone, we shall focus on the issue with respect to the farming community in this section. In so doing, we must keep in mind the observation of the Senate Standing Committee that "...soil, water and land use are integrally entwined." This results in many interested ministries and coordination problems. Moreover, the Senate Report warned: "Soil conservation cannot be dealt with in isolation from related issues such as water quality, land use, wildlife management, fisheries and forestry." While we can and do acknowledge this need to avoid isolation, any consideration of the problem(s) and suggestions for possible solution, of necessity, requires an examination of the subject-matter in its components.

The Senate's Standing Committee examined in some detail the soil and its degradation in each region of Canada. Let us focus, for a moment, on its specific remarks with respect to this Province.

Prince Edward Island soil was described as "generally shallow, low in natural fertility and organic matter, acidic, and with a low clay content. These soils [are] also described as being structurally fragile and highly erodible." The problem was not one confined to Prince Edward Island, for the findings were to the effect that "...the Atlantic region clearly had the least favourable soil conditions to begin with. As a result, the effects of certain agricultural practices are even more pronounced here than in other regions of the country. *Soil degradation, in some parts of the Atlantic region has, in fact, already reached disastrous proportions.*" [Emphasis added.]

Water erosion was identified by the Senate Committee as the number one soil degradation problem in Prince Edward Island. This included the effects of rainfall and run-off as well as shoreline stream bank erosion. The relatively wet climate also led to soil compaction problems, particularly where equipment used for harvesting potatoes was heavy and vibrated considerably. (It should be noted that not everyone has agreed with the vibration of heavy machinery as the cause of soil compaction problems so much as the practice of getting on the land too early in the season with this machinery.) While soil erosion by water was identified by the Senate Committee as being particularly serious in certain areas, such as the potato fields of the Province, wind erosion in the eastern two-thirds of the Province was also cited in this report. The problems of erosion were compounded by soil acidification which was treated by the annual application of some 230 pounds of lime per acre to improve farmland in order to exceed the combined acidity from atmospheric and fertilizer sources, according to the information published in *Soils at Risk*.

While these problems were common, to some extent, throughout the Atlantic region, the Senate Committee singled out Prince Edward Island for some commentary that included these remarks at pp. 67 - 8:

> In...Prince Edward Island, the potato growing areas are particularly vulnerable to water erosion since this crop is grown in rows, often up and down slopes, facilitating run-off. The practice of continuous potato production means that the soil is not well protected when it is most vulnerable. The potatoes are harvested late in the fall, often too late to allow for a cover crop to be planted, thus leaving the soil exposed to the heavy fall and winter rains. The situation...is exacerbated by the late winter-early spring freeze-thaw cycles. This phenomenon results in rain and meltwater flowing over a partially frozen soil surface, and is responsible for 80% of Prince Edward Island's soil run-off problems. Also, due to the high return from potato farming as compared to small grains, and the absence of livestock on most farms, crop rotation normally is not seen as economically viable for potato farmers.

> Some measurements of soil erosion rates have been made in Prince Edward Island over a five-year period. Values ranged from just 0.1 ton per acre (0.2 tonnes per hectare) under sod to 9 tons per acre (19.6 tonnes per hectare) with potatoes growing up and down the slope. If the potatoes are grown across the slope, this value can be reduced by one-third, indicating the importance of cultivation practices. Other conservation measures which are being promoted include sub-surface drainage.... Grass waterways, strip cropping, crop rotations and run-off control structures such as 'parallel-diversion-terrace systems' are further measures which can and should be used.

Another indicator of soil erosion rates is found in the paper entitled "Multi-Temporal Land Use Analysis for Soil Erosion in Selected Prince Edward Island (P.E.I.) Watersheds" by D. A. Wilson, M. L. McCourt and T. M. Humes, found in volume 4 of *Quantitative Remote Sensing: An Economic Tool for the Nineties* and presented at the 12th Canadian Symposium on Remote Sensing in Vancouver, B.C., in July of 1989. While the authors were concerned primarily with examining cost-effective means for monitoring and reporting on the effectiveness of conservation programs using such remote sensing devices as Landsat Thematic Mapper imagery and SPOT satellite digital and photographic data, their report contained detailed information on estimated soil losses in one part of the province in this passage, at p. 1980:

> The Dunk/Wilmot watershed complex represents the most intensive potato producing regions on the Island. (N. Stewart, pers. comm., 1989). As potatoes are harvested mainly during late fall, the harvested fields are left to overwinter as bare soil. These soils are open to freeze-thaw cycles in late winter and early spring which accelerates the rate of erosion (Canada, 1984). This bare-soil-over-winter problem associated with potato growing is P.E.I.'s greatest single problem in soil conservation, in part due to the potential erodability of orithic podzol soils. Within the upper 42% of the Wilmot watershed alone, 18.1% of the total area was planted in potatoes in 1986 (Marenco, 1987).
>
> *Estimates of soil loss on the upper Wilmot River watershed for 1986 were 7.3 tonnes/ha/yr on a total agricultural base of 2,750 hectares. Of this, 638 ha of potatoes contributed 36.6% of lost soil while 1,030 ha of grain accounted for 32.0% (Marenco, 1987).* The remaining cleared land was predominantly hay, pasture, soybeans and rye grass. [Emphasis added.]

While we have not endeavoured to undertake any comprehensive, scientific surveys that would refute or support these findings, the commentaries essentially conformed to the tenor of remarks made to us in *numerous* presentations at our public hearings.

Typical of these was the viewpoint expressed by the P.E.I. Institute of Agrologists who stated:

> Conserving the capability of land to produce food for future generations should be central to the objectives of a land use policy. There is concern with irreversibly converting land to other uses, and this cannot be overlooked or ignored. The major concern, however, is to preserve the land's production capability against deterioration by erosion or by deterioration of soil structure by inappropriate agricultural practices.

> Policies must continue to be developed which will encourage and facilitate wider adoption of soil conservation practices. Research and demonstration projects related to soil conservation must receive continuing support. Models used in other areas such as the USDA's Soil Conservation Service should be examined to determine if they can be adapted to improve soil conservation on P.E.I. Essentially, these policies require that users of land who receive government assistance must adopt approved soil conservation measures.
>
> It should be recognized that a vigorous crop cover is the best protection against soil erosion by water and wind. While more efficient nutrient cycling through better manure handling practices contribute to crop growth, P.E.I. soils are generally derived from parent materials low in plant nutrients, and continued inputs of plant nutrients will be required to maintain productivity and crop cover.

Soil erosion and/or degradation was cited to us as a major concern by numerous and diverse groups. The Federation of Agriculture, the National Farmers' Union, the Prince Edward Island Cattlemen's Association, the Prince Edward Island Institute of Agrologists, the West Prince Branch of Women in Support of Agriculture, the Island Nature Trust, the Friends of the Island, the Social Action Commission and the Coopers Institute were among those organizations which included proper land management or the stewardship of land as a theme of their presentations to us.

Further evidence that soil erosion and/or degradation is a major concern was suggested from a number of sources.

A Conservation Strategy for Prince Edward Island, which, as we have earlier indicated, was prepared for Executive Council by the Co-ordinating Committee for Conservation in March of 1987, identified this concern in brief but forceful terms. At. p. 5, the *Conservation Strategy* stated:

> *Soil degradation, primarily erosion, is the single most important resource problem facing the Province.* Farming is our basic industry; soil erosion threatens the resource on which it depends.
>
> Soil degradation represents a cost to farmers in terms of loss of fertilizers, organic matter and long-term lowered productivity. Its downstream effects are equally important, in terms of clogged ditches, silted streams and harmful effects on fish living in water over-enriched by fertilizers or polluted by land wash and pesticides.
>
> We have known about the consequences of soil erosion for many years. We have yet to put in place effective methods to control it. [Emphasis added.]

Secondly, there is *Soils of Prince Edward Island,* the Prince Edward Island Soil Survey for 1988 prepared by Agriculture Canada and the Prince Edward Island Department of Agriculture to which we have also referred elsewhere in this Report. This document pointed out the requirements necessary for soil to be classified as Class 1 in the nationwide Soil Capability Classification developed for the Canada Land Inventory and found that "[t]here are no soils in Prince Edward Island that meet all these requirements. All soils of the Province have low natural fertility and, for this reason, none are included in this class." The best soil in the Province for agricultural purposes then is Class 2 soil which the survey found in 36.7% of the land area.

In its description of Soil Capability Class 2, the Soil Survey of 1988 had this to say, at p. 90:

> Soils in this class have moderate limitations that restrict the range of crops or require moderate conservation practices.
>
> The limitations of soils in this class may be one of the following: adverse regional climate; moderate effects of erosion; poor soil structure or permeability; low fertility that can be corrected with moderate applications of fertilizer and lime; gentle to moderate slopes; occasional damaging inundation; wetness that can be reduced by drainage but continues as a limitation; and moderate effects of cumulative undesirable characteristics.
>
> These are the better soils on the Island, the ones most acceptable for intensive crop production. Along with Class 3 soils they are the resource base for the agricultural industry. *Within the industry a major soil management problem is the need for a program aimed at controlling erosion. The long-term viability of the industry depends on measures that can be taken now within the industry to minimize the accelerated erosion that occurs from soils left unprotected over winter. Erosion removes almost selectively the most valuable of soil components; organic matter, soil structure, water-holding capacity, soil nutrients, and exchange capacity or the ability of the soil to store soil nutrients. The problem has been documented reasonably well and technology for control is known. Control methods must be instituted at the farm level, and to be acceptable and reasonable the best insurance is that these methods are voluntary. To date, such controls have generally received low priority, partly because yields and quality of products have been maintained by improvements in other aspects of the production system. However, left uncontrolled, erosion will accelerate and eventually result in many fields and farms being virtually unsuitable for cultivated crop production.* [Emphasis added.]

Thirdly, we understand that the taxpayer has been called upon to assist in financing a number of projects aimed at management and conservation measures to assist farmers to combat soil erosion and degradation. Through the provincial Department of Agriculture, "free" laboratory services are provided that include soil testing to determine acidity levels, major and minor nutrients and organic matter content. More than 12,000 of these tests are completed annually, according to data provided to us, at a public cost of approximately $12 per test. Plans have been provided by the Department's engineering service over the past four years for the Federal/Provincial Soil and Water Management and Conservation Program. Under ERDA Programs, we have been told, there have been 283 drainage plans amounting to approximately 3.0 million feet of tile. In addition, there were 34 erosion/conservation demonstration projects carried out on Prince Edward Island farms. The information supplied to us showed that, in 1988, detailed plans were provided for 148 projects, that total planning under the Soil and Water Management and Conservation Program during 1988 included 1.35 million feet of tile drainage, 64,000 feet of open ditching, 12,500 feet of grassed waterways and 23,000 feet of diversion terracing. In addition, we were advised 700 acres of land were surveyed so that winter planning could be completed for diversion terrace and strip cropping work being proposed for 1989, while drawings were provided for 125,000 feet of tile drainage. Actual installations of tile drainage in 1988 exceeded 700,000 feet.

Along with participating in these activities, taxpayers through the Prince Edward Island Department of Agriculture subsidized limestone to prevent soil degradation and ensure soil productivity. Payments of $11/tonne, up to a maximum of 180 tonnes per eligible applicant in each fiscal year, are paid to some 1,250 farmers annually at a cost of approximately $600,000.

We understand that in August of 1989 the Province entered into a federal/provincial Soil and Water Conservation Agreement that commits the participants to the payment of $1.8 million over a three-year term with each party paying $300,000 per year to address water erosion, declining organic matter, soil moisture management and wind erosion. We understand that the activities under this agreement will be the major focus of provincial, departmental activities in the next three years and that these activities will be aimed at three central objectives:

(1) To facilitate the reduction of soil degradation on individual farm units and affect land use changes in order to maintain or enhance the productivity of the soil resource and to reduce the off-farm impacts of degradation.

(2) To extend the knowledge of soil conservation technology, practice and soil quality trends and to enhance the transfer of this information in support of awareness and on-farm activities.

(3) To encourage development of a long-term soil conservation ethic in society and increase the awareness and understanding of soil degradation and conservation among farmers in order to obtain public understanding and support in the protection of the soil resource and encourage the early adoption of soil conservation practices by farmers.

In light of the concerns expressed to us by many organizations and individuals at our public hearings, the loss of Class 2 soils in the past 15 years, the priority allocated to this issue in the *Conservation Strategy,* the dire predictions inherent in both the Senate Committee's report and the 1988 report on *Soils of Prince Edward Island,* as well as the public expenditures made and committed for the future in this regard, *we were both shocked and dismayed when a senior official in the provincial Department of Agriculture seemed unwilling to acknowledge that soil erosion was a problem in the farming sector.*

Moreover, we were given several examples, in the course of our hearings, to indicate that projects undertaken by the Department of Agriculture had had the effect of improving a situation for the benefit of one parcel of land at the expense of others. For example, we were told of a project where drainage had been installed, resulting in improvements for the property owner installing the drainage, but the result was flooding on a nearby property which had not experienced this problem in earlier years.

We were also advised that drainage projects had, on occasion, added more run-off to nearby streams, thereby increasing the concentrations of fertilizers and chemicals in the waters to the detriment of fishing concerns. It would appear that the linkages between agriculture and fisheries' economic losses have not been made in respect to this issue. Shellfish are especially vulnerable to siltation through lost production, lower quality product and, hence, lower value. There are added expenses incurred by fisheries departments to enhance oyster beds in an effort to combat the effects of siltation. As a case in point, the landed value of a choice quality oyster is approximately 26 cents. A commercial quality oyster, which has a poor shell shape because of siltation, is worth less than six cents!

Dissatisfaction with the thrust of the provincial Department of Agriculture in dealing with soil erosion is found in *A Conservation Strategy for Prince Edward Island,* at pp. 7 - 10:

> Present programs designed to assist farmers to control soil erosion are not very effective. It has been reported to us that, since 1984, the Soil and Water Conservation Program (ERDA) has been used to provide erosion control for less than 25 hectares of land in this Province. We are unable to determine whether the problems are those of eligibility criteria, too high a cost for the farmer, inadequate information, or other factors. The fact is that most of the funds expended have been for tile drainage and not for direct erosion control. Although some research on erosion has been done, both in this Province and elsewhere, we believe that it has not focused enough on the problem within the context of economic farming. *More needs to be done on an onfarm basis.*
>
> Research on soil problems must increase, with a focus on on-farm problems such as those involving bare-soil-over-winter, machinery adaptation and developing economic rotations.
>
> In many cases, *farmers themselves are valuable sources of research ideas.* Farmers often have good ideas on conservation but are unable to articulate them to fit particular funding projects. Research and extension services should seek out these ideas for inclusion in soil erosion programs. . . .
>
> We believe that the Department of Agriculture must upgrade its extension services to farmers with additional expertise in soil conservation. Given the extremely serious long-term effects of the problem, *the Department must ensure that soil conservation has a higher priority than at present. Extension needs to focus upon the development of a sustainable agriculture, not just productivity increases for specific crops.*
>
> What is needed is more people with a sound training in soil science and with a sound grasp of the practicalities of farming. *Soil conservation specialists should be out in the field, convincing farmers of what needs to be done.*
>
> Greater use should be made of the Soil and Crop Improvement Associations. They require a greater continuity and stability of funding so that demonstration projects can be expanded. We believe that *most farmers will take up new conservation practices only when they can see practical results for their own farms. [Emphasis added.]*

This is not to say that there has been nothing done about soil degradation in the years since the last Royal Commission report. Some progress was recognized in *Soil at Risk: Canada's Eroding Future:* urging the need for more research on soil conservation, the Senate Committee cited the P.E.I. Plot Trial Program as a good example of the type and quality of program required. Elsewhere in the Senate Report, the Prince Edward Island effort was lauded with very cautious optimism in this words, found at pp. 68 - 9:

> The government of Prince Edward Island under a jointly-funded program with Agriculture Canada, has implemented 47 land management demonstrations across the Province. These demonstrations include sub-surface drainage, ditching, land levelling, diversions, french drains, grass waterways and fall seeded crops. *This program has been judged a success since it offered farmers a chance to see at first hand on-farm working systems.* It is still too early to judge the success which the program will have in persuading farmers to adopt the technologies which were demonstrated. As elsewhere in the country, the cost of undertaking soil conservation measures will deter many would-be conservationists in Atlantic Canada. This is especially true if the benefits of the practices being promoted are unproven or poorly understood by the farmers. This highlights *the importance of* increased funding for research and *on-farm demonstrations* of conservation technologies and practices. [Emphasis added.]

Aside from highlighting some aspects of the Prince Edward Island situation in respect to soil degradation, *Soil at Risk: Canada's Eroding Future* raised a number of issues about soil erosion and soil degradation that are useful to review.

First of all, the report found that economic realities were putting pressure on the economic sector and acting as a major constraint to soil conservation. At the same time, production priority has taken its toll on soil quality.

A number of farm organizations and producers told us repeatedly that agricultural economics was a very important factor - perhaps the single most important one - in the whole area of soil conservation. They recognized the need to retain soil and to ensure quality soil for the long-term health of the agricultural sector. But the reality of costs involved did not always permit them to do the things that needed to be done. This was particularly so in the potato industry.

The dilemma posed for the farmer is a particularly difficult one. We can readily understand and sympathize with the problem: when agricultural costs dictate economies, expenses are cut wherever possible to reduce the immediate costs of production. Soil conservation measures, particularly those that will be profitable only in the long-term, are considered to be expendables at such a time. On the other hand, farmers need to realize that it is during hard times that they can least allow their capital to depreciate. We have no doubt that members of the farming community recognize this principle in respect to other assets: farm machinery is most carefully maintained at the very time when the owner knows he can least afford any replacement. The farm's most valuable asset, its land, must be accorded the same consideration.

A second factor, identified by the Senate Standing Committee, is the effect of monoculture farming. While the report was talking of the situation in relation to British Columbia, analogies can be drawn here. There, "the competition over land use pushes land costs up. As a result, landholdings tend to be small. This fact, plus the need for relatively stable incomes has pushed farmers to concentrate on one type of enterprise and to produce, year after year, crops which can provide a cash return (monoculture)." (p. 37) The report found that in small landholdings, such as those producing poultry or hogs, there may be an inability to handle the manure produced. When applied in excessive amounts on small holdings, this manure may result in excess nitrate leaching into groundwaters. The Senate Committee found there were fewer soil conservation problems on diversified farms, such as dairy farms where forage crops are grown. It also found that early planting "leads to serious compaction of the soil" - crops are planted early to go to market before imports arrive.

Another example of monocultural farming described in *Soil at Risk,* at p. 92, was that of the New Brunswick potato industry. There, however, the problem was identified as part of a case study where a solution had been found: "Although mixed farming operations are not typical of most potato growers, the Senate Committee was told that some growers are now entering into cooperative arrangements with neighbouring dairy farmers for the purpose of getting hay into the rotation on potato farms. In this exchange, potatoes are planted by the grower on an agreed area of the dairy farm."

Prince Edward Island has more monocultural farming than ever before. The reasons relate more to high costs of machinery and the greater levels of expertise needed in farming today than to land costs (at least in comparison with British Columbia). Early planting with heavy machinery takes its toll on the soil - as does late harvesting in the potato industry. But the monocultural nature of the farm has, to some extent, transcended the individual farm and extended into specific areas of the Province. It may be somewhat of an over-simplification to say that potato farms are found in certain sections of the Province while livestock operations are elsewhere. But from a pragmatic standpoint it is true there are parts of the Province where farming operations are so intensely devoted to the potato industry that the type of cooperative arrangements exemplified by the New Brunswick case study would not be practical.

The Senate Report also cited, at pp. 55 - 56, the growing practice of leasing land as a factor involved in soil erosion in the context of Central Canada. "A third trend which bears mentioning is the increasing amount of farmland which is rented rather than owned by the farmer. Many leases are verbal agreements with no 'obligations' spelled out in detail and most are for one or two years at a time. As a result, the renting farmer is reluctant to take any conservation measures for which the payout is only in the long term."

These concerns in respect to the relationship between the leasing of agricultural land and soil degradation were explored in some detail by V. Van Vivirn and P. Ysselstein in the "Relationship between Land Tenure and Soil Productivity", an article prepared for the Department of Agricultural Economics and Business at the University of Guelph and published in the *Canadian Journal of Soil Science* in 1986. The authors undertook a detailed study in seven counties of southwestern Ontario "in order to determine the effect of tenancy on land management and consequently on soil conservation and on soil productivity." As this study is an excellent example of the "land ownership versus land use" question we address elsewhere, we wish to elaborate on it in some detail.

The significance of the study's findings can be appreciated only if certain terms used by the authors are understood at the outset. In particular, they used the term "land tenure" to refer "to all relations of control between man and land, such as ownership, ownership under restrictive covenants, tenancy, etc." The word "tenancy" referred to "those property rights which are surrendered by the owner to the user at a set price for a particular time period." Both "renting" and "leasing" were used as synonyms for "tenancy".

In the study, farmers were divided into three separate categories: owner-operators, part-owners and full tenants. The "owner-operator" was defined as "a farmer who owns and operates his land." In other words, the "owner-operator" did not use any leased land. The "part-owner" was defined as "a farmer who owns part of the farm he operates and rents the remainder", while the "full tenant" was defined as "a farmer who rents all the land he operates". (The term "part-owner", as used in the study, is not to be confused with the more common usage of the term which normally implies a co-ownership with others in relation to a particular parcel of land.)

Through the examination of Statistics Canada data, the authors found a considerable change in land tenure patterns in the Province of Ontario over a thirty-year period. This change was explained at p. 359 in these terms:

> According to Statistics Canada, 24% of agricultural land was operated under rental arrangements in 1981, while the corresponding figure for 1951 was 11%. Total hectares rented changed from 0.9 million in 1951 to 1.4 million in 1981, while total farmland declined by 2.4 million hectares during this time; from 8.4 million to 6 million ha.
>
> The change in proportion of land operated by the various tenure groups is even more remarkable. Owner-operators farmed 77% of the agricultural land base in 1951. This decreased to 49% in 1981. On the other hand, part-owners operated 47% of the land in census farms in 1981, compared to only 16% in 1951. Rented land as a proportion of total land operated by this tenure group has remained fairly constant over time, around 40%. The proportion of the agricultural land base in the province operated by full-tenants decreased slightly, from 4.8% in 1951 to 4.3% in 1981.
>
> A remarkable change has occurred between the tenure groups renting land. In 1951, 55% of all land under a lease agreement was rented by part-owners and 45% by full-tenants. This changed to 82% and 18%, respectively, in 1981. Part-owners have become the dominant tenure group renting land. The rapid increase in part-owners over the past three decades appears to result largely from farm expansion. *To a large extent, farm expansion has been pursued by renting additional land, changing full-owners to part-owners.* [Emphasis added.]

Van Vivirem and Ysselstein postulated on the relationship between tenancy and economic decision-making in relation to soil conservation practices. At pp. 359-360, they wrote:

> Certain rental arrangements can negatively affect soil conservation. Rental arrangements such as short-term, or verbal agreements, or leases lacking compensation clauses, are examples of such detriments (CiriacyWantrup 1963). Short-term arrangements without compensation clauses make future benefits and/or costs resulting from current actions by the tenant incident on other than the tenant. *Most rental arrangements lack provision for compensating tenants for the unused portion of benefits arising from investments undertaken by them. They usually lack a means of compensating landlords for land deterioration caused by tenants.* The above compensations would occur at the expiry date of the contract. *Verbal arrangements lead to uncertainty about the content of the contract.* This becomes important when conflicts arise between landlord and tenant.

> The factors outlined above lead to short planning horizons for the tenant. *Future benefits and/or costs derived from current actions of the tenant, which are received and/or incurred beyond this short length of time, are either too uncertain to be worthwhile in the tenant's economic calculation or are incident on other than the tenant.* Most soil conservation investments and practices distribute their benefits over a much longer timespan than the duration of a short-term rental agreement. Adopting short planning horizons make such investments less attractive to the tenant and can therefore be expected to discourage soil conservation, while encouraging mining of the soil. *These particular rental arrangements are not innate to renting itself, but stem from the content of the contract.* [Emphasis added.]

The characteristics of the land rental in the survey area were detailed by the authors. Since there are a number of characteristics which, we feel are applicable to the situation in this Province, it is worthwhile outlining the description provided by Van Viviren and Ysselstein, at p. 361, where they wrote:

> The total amount of land covered in the survey was 32,375 ha of which 11,938 ha were rented. Farmland expansion had occurred on 42% of the farms surveyed over a 5-year period prior to 1981. Seventy percent of the hectares added were rented, indicating that *the expansion of farm size was most heavily dependent on land rental.*
>
> Sixty percent of the land was rented from nonfarmers, 29% from retired farmers, and 11% from active farmers. *Land under absentee ownership* (defined as owners residing outside the township in which the parcel was rented) *amounted to one-quarter of the rented land.* Eighty-eight percent of landlords residing outside the township in which the parcel was rented were nonfarmers.
>
> *One-year leases dominated in the survey area. These short-term leases, however, were no indication of a rapid turnover of tenants.* On average, a tenant operated a rental unit for 7.5 yr. Fifty-five percent of the 590 rental units (a farmer may rent from more than one landlord) were leased by the same tenant for 6 yr. or more. Although 82% of the lease contracts were for 1 yr., 86% of the part-owners in the sample preferred a lease longer than 1 yr.
>
> *Seventy-seven percent of the 590 contracts were in verbal form only, apparently with a minimum of contractual obligations on both parties.* A written lease was used more frequently for larger units. The sample showed a mean of 27 ha per unit on written contracts compared to 19 ha on a verbal arrangement. Only 6% of the written contracts contained compensation clauses for land improvement.
>
> The above statistics show that short-term and verbal rental arrangements dominated in the area. *Of the written contracts, only a very small percentage contained compensation clauses. As explained earlier, these features are expected to result in mining of the soil by the tenant.* Although the average occupancy of the tenant was considerably longer than the duration of the rental contract, *the tenant nevertheless remains uncertain about his future occupancy, since he does not know whether he can renew his contract on the expiry date.*
>
> Ten percent of the contracts prescribed which crops could be grown and 5% of the agreements prescribed that certain cultivation or erosion control methods must be followed. *This paucity of obligations that the tenant must abide by in order to*

> *maintain soil quality, can most likely be attributed to the indifference of landlords. In particular, non-farm and absentee landlords are often not well informed.* It is often claimed that *absentee landlords, particularly nonfarmers, lack information about soil degradation and conservation practices, and that communication between those landlords and the tenant is minimal* (Carlson et al. 1977; Ervin 1982)
>
> Rental payments are mainly in the form of cash, with only 9% as crop-share leases, or a combination of cash and crop-share. Cash rents varied in 1981 between $12 and $330/hectare, although 75% of the units rented for between $50 and $200/hectare. [Emphasis added]

The Van Viviren and Ysselstein study considered soil quality in the survey area using seven soil characteristics and a system of "encumbrance points" which measured and expressed the limitations of various physical features of the land on agricultural productivity. "The number of encumbrance points assigned to each feature of a particular parcel measures the degree of limitation of that feature for agricultural productivity. The minimum number of encumbrance points is zero, indicating no physical limitation, and the maximum, value varies with the importance of that particular feature for agricultural production". Under this scheme, the maximum encumbrance points for erosion are 20 and for drainage are 40, corresponding respectively with severe erosion damage and very poor drainage.

The authors found "the average number of encumbrance points for each feature was higher on rented land than on operator-owned land.... This indicates poorer soil quality on rented land. The greatest difference was found in the drainage component." However, the authors were quick to point out that it was not necessarily the tenure of the land that "caused" it to be of poor quality, but they felt the system of tenure did operate as a major factor in determining whether a "cure" would be undertaken.

> This difference in soil quality is not necessarily a reflection of tenure. The land could have been in a poorer state all along. It must be noted, however, that some of these features, such as drainage and stoniness, can be improved. Other features such as erosion damage can be prevented from further deterioration. Low-quality land needs other soil management practices. For example, sloping land which is susceptible to soil erosion needs crop rotation rather than the monoculture of a row crop. Moreover, such land may need such practices as strip cropping and contour farming. Land which is excessively wet needs tile drainage. *Whether or not such practices are undertaken depends on their economic profitability. The crucial point is that such practices may be profitable under operator-ownership, but not under tenancy.* [Emphasis added.]

The authors examined both annual and long-term soil management practices in relation to tenure. They found that part-owners (farmers who owned part of the farms they operated and rented the remainder) operated their owned land differently from their rented land. These findings, explained at pp. 362-4, included the following:

> *Crop rotation, manuring, erosion control and stone picking were performed more commonly on owned than on rented land, while the quality of the rented land was in fact lower and in greater need of those practices.*

> Ameliorative practices were performed more often on land of lower quality, for both owner-operated and rented land. However, *more operators abstained from performing soil management practices on their rented land than on their owned land, even though the physical features of rented land were generally poorer than those of owned land.* For example, 48 out of 284 operators practised monoculture on their rented land while only three did so on their owned land... .
>
> Still, on average, the erosion damage was greater on rented land where monoculture was practised than on owned land where crop rotation took place... . Also the rented land on which monoculture was practised was considerably steeper and therefore more likely to be erosion-prone than the owned land under monoculture...
>
> *A different mix of crops existed on owner-operated land than on rented land.* In 1981, 41% of owner-operated land was in row crops (mainly corn) and 38% was in sod crops. On rented land, the percentages were 50 and 25, respectively. The area of land in permanent pasture was relatively small, amounting to 8% of owned land and 5% of rented land. The average proportion of land in row crops on owner-operated land was significantly different from the average proportion of row crops on rented land... .
>
> *Manure was applied to a lesser extent on rented land than on owned land;* only 12% of the rented acreage was manured, as opposed to 35% of the owner-operated land. *Where manure was applied on rented land, it was always on parcels near the farm headquarters.* [Emphasis added.]

As might be expected, the survey found significant patterns in the relationship between tenure and long-term soil management practices. The discussion at pp. 364-5 found insecurity of tenure was a major component in this issue.

> Non-recurrent investments such as tile drainage, terracing, and engineering works to control erosion return their benefits over a long time period. Adoption of these practices is expected to be considerably affected by future uncertainty, particularly in the area of land tenure. The operators in our study were asked whether or not their rented land needed any of these capital expenditures, and if so, whether they expected them to be undertaken in the next 5 years by either the landlord or themselves if renting continued. They were also asked whether they would have undertaken the expenditure if they had bought the parcel instead of having rented it. ...
>
> Capital expenditure was needed particularly for drainage, indicating relatively poor drainage conditions on rented land. ... *[A] change in tenure status from tenant to owner-operator would, according to the respondents, lead to considerably greater capital expenditure on their part for land improvement.* For example, of those operators who expressed a need for drainage on their rented land, 56% expected drainage to be undertaken either by the landlord or by themselves if renting continued, but 90% of the current tenants indicated that they would invest in it if they were able to buy the land.
>
> There remains the question of why improvement practices and investments were less frequently undertaken on rented land. The practices could be profitable on owned land but not on rented land if the rented land is inherently inferior and consequently the marginal returns of management practices upgrading the land fall short of their outlay. On the other hand, profitability of the practices could depend on the form of tenure.

> *There are strong reasons suggesting that the low level of improvement investments on rented land was not due to low marginal returns, but to insecure tenure.* ... [T]he soil characteristics that cannot easily be modified by man, such as soil texture, topography, and depth to bedrock, exhibit relatively small quality differences between owned and rented land. On the other hand, *those features that can be improved by, for example, drainage, or whose deterioration can be prevented, such as, for example, erosion, show relatively large quality differences between owned and rented land.* If rented land were inherently substantially inferior to owned land, making improvement investments unprofitable, one would also expect relatively large quality differences in features that cannot easily be modified by man. Moreover, *the results...show that if the rented land were farmed under a more secure tenure form, improvement investments would be undertaken to a much greater extent. This suggests that their marginal returns were sufficient to encourage investment, but insecure tenure inhibited such investment.* [Emphasis added.]

While this survey related to one part of Ontario, the authors felt that "the conclusions probably apply to any rented land farmed under the same set of rental arrangements". Their solution called for government intervention in the tenure of land in order to encourage leasing arrangements that ensure suitable conservation policies and, at the same time, offer tenant farmers more security in the availability of land they are using. In their conclusions, Van Viviren and Ysselstein stated at p. 366:

> Renting itself is not bad. Rather, *it is what the contract does or does not stipulate that causes the problem. This can be changed through government involvement and legislation. Ministries of Agriculture, for example, can draw up model contracts and try to persuade landlords and tenants to use them. On the other hand, legislation could be introduced requiring that the contract satisfy certain conditions.* Many countries in Europe have extensive tenancy legislation, in contrast to North America which has very little. As a consequence, cultivation practices and productivity levels of rented land in Western Europe are not significantly different from those on owner-operated land. As a matter of fact, several studies in Great Britain showed rented farms to perform better than owner occupied farms on various measures of input, income and productivity (Attwood 1956; Britton and Hill 1978; Hallett 1960).
>
> *The promotion of longer-term leases appears to be needed. It is even more important to ensure that expected revenues and costs, functionally related to the actions of a tenant, whether soil depletion or improvement practices, are incident on him. Compensation is an important mechanism to ensure more equitable revenue cost-sharing between tenant and landlord.* Most arrangements in Canada seem to lack this mechanism.
>
> *With the increase in Canadian farmland rental and its concurrent effect on maintaining soil productivity, it is important to establish rental arrangements that accommodate leasing along with soil conservation. This is unlikely to occur without government support.* [Emphasis added.]

Are the findings in the Van Vivirem and Ysselstein study applicable to Prince Edward Island? We have reason to believe that this question should be answered in the affirmative.

To arrive at this conclusion, we examined the Statistics Canada data in relation to Prince Edward Island to determine if the trends towards using leasing agricultural land was equally evident here. We found that the pattern of change was, if anything, more striking here.

The Statistics Canada data showed that 22.7% of agricultural land was formed under rental arrangements in 1981 - compared with a figure of 2.5% in 1951. The total acreage rented in 1951 amounted to 27,291 acres (11,048 ha.); this rose to 158,801 acres (64,264 ha.) in 1981. During these three decades the total farming area in Prince Edward Island declined by 395,937 acres (160,298 ha.), from 1,095,304 acres (443,442 ha.) in 1951 to 699,367 acres (283,144 ha.) in 1981.

These trends continued with the 1986 Statistics Canada data indicating 26.5% of agricultural land was being farmed under rental arrangements. The total acreage rented in 1986 amounted to 178,571 acres (72,295 ha.), an increase of 19,770 acres (8,004 ha.) over the preceding five years. Again, the total farming area in the Province showed a further decline of 26,171 acres (10,595 ha.) to 673,196 acres (272,548 ha.).

Among the "tenure groups", Statistics Canada reported that, in 1951, there were 9,269 farms operated by owners; 82 farms operated by tenants; 545 farms operated by those who used both leased land and land they owned ("part owner, part tenant") and 241 farms were operated by managers. This meant that 6.2% of the 10,137 farms used leased land for some or all of their farming operations. (Farms operated by managers were grouped with those operated by owners to reach this proportion.)

In contrast, by 1981, there were 1,795 farms operated by owners; 118 operated by tenants (those who leased all land used for their farming operation) and 1,241 farms operated by both ownership and tenancy arrangements. Of the 3,154 farms in all, a total of 1,359 farms (43.1%) used leased land for at least part of their farming operations. Yet, in the three decade interval, the total number of farms had declined by 6,983 units.

Once again, these trends have continued: the 1986 Statistics Canada data showed the total number of farms to be 2,833 - a decline of 321 farms over the preceding five years. With 1,579 farms operated by owners, 147 by tenants and 1,107 by those who were "part owner, part tenant", the proportion of farms using leased land for all or part of their farming operations rose slightly - to 44.3% of all farms.

While we have not conducted a formal survey on tenancy relationships in Prince Edward Island, many of the themes that characterized the land rental patterns in this Ontario study were ones repeated again and again in the presentations made at our public hearings. During our questionning of representatives from farm organizations, it was apparent that land rental is important in the Island's agricultural sector. It is often seen as a compromise that enables farmers to expand their acreage at low cost while simultaneously allowing absentee landowners to hold ownership title to otherwise vacant farmland. Leases are usually short-term and informal, with minimal contractual obligations, but the same tenant often utilizes the same parcel of land for several successive years. There was little indication, if any, that non-farm owners, particularly absentee landowners, were concerned about farming or conservation practices in relation to the properties they leased.

Throughout our hearings we were told repeatedly that government was not adopting a leadership role in dealing with soil erosion and soil degradation. The public was particularly critical of the Land Development Corporation (now known as the Agricultural Development Corporation), the largest single landlord of agricultural properties in the

Province. While those who were critical of the Corporation's performance, which, they felt, fell far short of an acceptable standard, they were equally strong in their conviction that the Corporation should provide a role model both for private-sector landlords and the agricultural industry.

Even though this criticism of the Corporation would suggest leased land was treated differently from land that is being farmed by the owner-operator, there was a reluctance on the part of participants in our hearings to admit that land which was owned by the farmer was treated with more careful attention to conservation practices than land which was farmed under a leasing arrangement. Nevertheless, we understand that some evidence which might be indicative of this is now forthcoming.

Preliminary results of a study commissioned by the P.E.I. Soil and Crops Association indicate that in a significant number of cases, land leased by the Land Development Corporation/Agricultural Development Corporation is being inadequately managed by the lease holders. This study found that 20% of the Corporation's leased lands had no lime applied; 30% was in grain or row crops for the entire lease period with no hay or legume crops in the rotation and 25% of the properties exhibited obvious erosion problems. When this study was brought to our attention, it had not been completed but the preliminary results would suggest that an in-depth survey, such as that used in the study by Van Vavirem and Ysselstein, could demonstrate differences in conservation practices between leased farm land and land being farmed by the owner-operator. (Alternatively, if there are no such differences, then the preliminary results of the survey would indicate a significant amount of farm land, whether owned or leased, is not being adequately managed.)

The preliminary results of this study also serves to confirm that the Land Development Corporation/Agricultural Development Corporation has confined its activity to farm land financing and redistribution, repeatedly ignoring its mandate in relation to land management and conservation. This void in the Corporation's activities was brought to the attention of the 1973 Royal Commisison, which had recommended that a minimum maintenance requirement be placed on the landholdings of the Corporation (among other land owners). In the interim, it would appear that the Corporation has not taken forceful steps to provide meaningful remedies.

We recognize that there are difficulties with finding solutions that are totally satisfactory in dealing with soil erosion and soil degradation problems. The fact that the majority of the potato crop is harvested too late in the year to allow planting of a winter cover crop, for example, is a major difficulty, given that the potato industry is such a central one in the agricultural economy and that row crops, such as potatoes, are particularly demanding of our soils. Furthermore, we realize that some solutions can be very costly and the financial realities and future uncertainties of farming make it impractical to hope for perfect cures in all situations. While these limitations cannot be dismissed as inconsequential, they should not be allowed to stand in the way of implementing some measures that can be helpful in controlling soil erosion and degradation, including crop rotation, contour farming methods on sloped lands, enhancement of hedgerows and preservation of green belts around watercourses.

The difficult challenges presented by soil erosion and degradation will not be solved by a defeatist attitude. Unfortunately, it would appear that the provincial Department of Agriculture has largely accepted a position that only expensive solutions can work and, in the midst of financial restraint, these cannot be expected to be forthcoming. This "policy" was expounded to us in these terms:

> Until now agricultural technology has made limited progress in demonstrating cost effective methods of soil conservation. It is not likely, despite efforts, the educational programs can have other than limited success in the near future as economic pressures increase on farm production methods. Efforts to demonstrate conservation and proper land management approaches should be continued with increased efforts to demonstrate the economics ie. cost/benefits of these practices. However, it is not realistic to expect farmers to implement soil conservation practices which are expensive to set up and/or maintain, if these cannot be paid for from the price of food received at the farmgate. The alternatives are for greater research and development efforts on cost/effective farm practices or assistance from government. This additional assistance may be unrealistic to expect in light of current and expected budget restraints and demands from a variety of sectors.

Like the fight against cancer, we are convinced that soil erosion and degradation problems will not be cured by a single solution but by a series of many steps, both large and small, each of which is another "Eureka"! Therefore, without minimizing the need for costly and sophisticated approaches to solving these problems in some circumstances, we are of the view that a number of immediate and relatively inexpensive measures can be undertaken to address these issues.

In addition to the work to be funded under the new federal/provincial Soil and Water Conservation Agreement, we are of the opinion that the need for better land management practices can be enhanced and enforced through a variety of government mechanisms.

Customarily, leasing agreements and mortgages require that tenants and mortgagors do not "waste" the property which is the subject of the lease or mortgage. Landlords and mortgagees require, usually as a matter of course, that properties be suitably insured against losses. But the principle of safeguarding the security of the asset that is leased or mortgaged has not been adequately extended to ensuring the preservation of the soil itself. It is time that the principle is used in this fashion by the adoption of the practice of using conservation provisions in leases and mortgages, particularly where the land itself is the essential resource.

Accordingly, we recommend

- **THAT all Agricultural Development Corporation leases contain provisions regarding soil conservation measures that outline the obligations of landlord and tenant. As a minimum, these leases should clearly specify the crop rotation cycle required of the tenant, the preservation of green belts around streams and other waterways and any areas of the property requiring special land management practices, such as contour ploughing and harvesting, or the establishment, preservation or enhancement of hedgerows.**

- **THAT all mortgages given to the Agricultural Development Corporation and the Prince Edward Island Lending Authority should contain covenants that spell out appropriate conservation measures and enforcement procedures to ensure these provisions are honoured.**

We are of the view that public money should not be expended in furthering, directly or indirectly, poor conservation practices. The principle of linking proper land management to funding programs is used widely in American jurisdictions. Such a practice is not only a means of ensuring the prudent use of public funding but also serves as a vehicle to bring the importance of the conservation message repeatedly to the forefront for many land users.

In our opinion, the objectives of such a policy would be more achievable if the obligation(s) tied to any particular program are specific, not a general smorgasbord of conservation practices that might or might not have some affinity to the funded program. There are numerous examples where this linkage would be a very logical one. Eligibility for crop insurance, for example, should depend on suitable crop rotation practices by an applicant. Since excessive limestone and fertilizer run-offs are not only financial losses but environmental liabilities for streams and other waterways, it would be a matter of common sense to insist the limestone subsidy should be available only to applicants prepared to enter into an agreement for greenbelt preservation along waterways. The existing data bases with respect to the province's land resources and its funded programs, together with the use of computers and such new technological aids as satellite monitoring, can be used to employ and enforce tied obligations of this type without the need for extensive additions to the supervisory and administrative components of existing programs.

Accordingly, we recommend

- **THAT all funded programs for the agricultural community be reviewed and, where possible, revised so that selective soil conservation practices become tied obligation(s) to specific funded programs. As a starting point, eligibility for crop insurance should depend on suitable crop rotation practices by an applicant and the limestone subsidy should be available only to applicants prepared to enter into an agreement for green belt preservation along waterways.**

Ensuring that conservation measures are applied to leased land must be given a special priority. While some of the preceding recommendations will assist in this regard, we are of the opinion that measures are needed which would bring to the attention of landlords, particularly non-farming and absentee owners, the need for conservation practices. In addition, measures that would provide more stability to the tenure of leases would be an inherent incentive to engage in conservation practices, particularly those which require large and immediate expenditures but which do not produce appreciable benefits in the short-term. We suspect that many rental agreements involving farm land do not take into account the possibility of having compensation arrangements, where tenants compensate landowners for deterioration to the land at the expiry of the lease or where tenants receive compensation for the unused part of benefits that arise from expenditures made by the tenants during the lease. More information on such arrangements, formulae that could be used to determine compensation in various circumstances, and sample clauses to include in written leases on such forms of compensation should be a part of effecting the implementation of more conservation measures in rental arrangements.

Accordingly, we recommend

- **THAT the Department of Agriculture, in cooperation with the Agricultural Development Corporation, develop a simple model lease agreement which incorporates basic soil conservation measures and encourage the parties to land rentals to use written leases which could be derived from this model. In addition, the Department of Agriculture and the Agricultural Development Corporation should provide information for both landlords and tenants of farm land on landlord/tenant compensation for land deterioration and for unused benefits arising from long-term tenant investment in the land.**
- **THAT any special concessions in property taxes relating to the agricultural use of land require landlords to have long-term, written leases with soil conservation provisions in order to qualify for such concessions.**

We endorse the suggestions calling for more demonstrations of workable conservation measures. Moreover, we are of the view that there are many participants in the agricultural sector who are now struggling to use soil conservation practices and who are not receiving any recognition for their efforts. Their examples would serve as valuable demonstration models for others and their efforts should be acknowledged.

Accordingly, we recommend

- **THAT the Agricultural Development Corporation should examine its inventory of land to determine parcels on which suitable long-term conservation measures would be meaningful and should then determine priorities for accomplishing such measures, so that these parcels could serve as demonstration projects for the agricultural community. Such demonstration projects should be cost-shared by written agreement between tenant and owner with the financial obligations determined by such factors as the term of the lease and the value of such improvements at the end of the term of the tenancy.**
- **THAT a recognition program should be developed to acknowledge the efforts of farmers who practice good soil conservation methods. Successful recipients should be given signs they could affix to the property that has benefitted from the conservation practices.**

Both the Agricultural Development Corporation and the Department of Agriculture must consider simple and inexpensive ways to bring conservation measures constantly to the forefront. For example, the Agricultural Development Corporation could further its own land management while encouraging conservation practices by promoting short-term land exchanges among farmers who may not wish to lease land to expand their operations but who require other land, in the short-term, simply to maintain existing acreage. Such a land exchange need not be confined to lands under the control of the Agricultural Development Corporation.

- **THAT the Agricultural Development Corporation and the Department of Agriculture should develop and promote a land exchange program that would encourage more farmers to trade parcels of land for short-term exchanges in order to facilitate greater crop rotation and otherwise improve land management practices.**

Our view of soil erosion and soil degradation has focused on agriculture. We must not lose sight of the fact that these issues must be of concern to all land owners and users in the province. Attention must not be placed solely on the farming community, many of whom are already well-versed in conservation considerations.

Accordingly, we recommend

- **THAT awareness on soil conservation problems should be extended to all members of the public, rather than be isolated as an agricultural issue, and that this goal be accomplished through a variety of means, including: the preparation of a brochure on soil erosion for all property owners, which should be included in annual property tax bills; the distribution of the model lease agreement to all property owners who own more than 5 acres of land; the encouragement of local media participation in bringing this issue to the attention of the public.**

Chapter 26

PROPERTY TAX

One of our terms of reference is to inquire into and report on "the relationship of property taxation to land ownership and land use". This mandate is so broadly phrased and the subject itself so complex, we are of the opinion that an inquiry given this task alone would face a major challenge in responding. While the essential goal of property taxation is the generation of revenues for the public purse, there is no question that taxation measures can and do affect decisions that impinge on both land ownership and land use. Moreover, it is no secret that governments have long utilized taxation measures as a means of effecting social and economic policy changes. Taxation measures, used in this fashion, are a substitute for regulatory or prohibitionary legislation that would, more directly, shape decisions in a certain way.

A few examples, derived from current Income Tax measures, serve to illustrate these observations. The first of these is the provision that allows a tax shelter, in most circumstances, for capital gains derived from the increase in the value of property where that property has been used by the taxpayer as a principal residence. We suspect this feature of property taxation has been a factor of some consequence in the trend towards homeowners who, in increasing numbers, move through a succession of houses in the course of a few years even though they remain in the same geographic area and they have not increased their family size sufficiently to require larger homes. Ownership of property also provides a tax shelter, even where the property is not a principal residence, for, unlike other forms of investments where increased wealth through the payment of interest is subject to periodic reckoning with the tax collector, the property is a relatively benign element in the taxpayer's investment portfolio until its ownership changes. Even then, measures that fractionalize the accrued gains, thereby sheltering a percentage of profits from the full effect of the income tax liability incurred by income derived from other sources, and, more recently, measures that fully protect a taxpayer's initial level of capital gains can make land ownership an attractive investment from a taxation standpoint. Providing that an investor has patience and some faith in the inflationary consistency of land prices, property taxation measures in the *Income Tax Act* can result in generous treatment for a land owner. On the other hand, our discussion on "heritage preservation" includes information on how taxation provisions have distorted investment decisions in relation to the rehabilitation of revenue generating properties.

Earlier, in the section on Charlottetown, we mentioned that, in 1955, Charlottetown had 3 real estate offices. Today, there are some 19 real estate offices in the Charlottetown area alone advertised in the telephone directory. In 1989, there were more than 50 firms and 236 real estate sales people licensed in the province. Yet, for all intents and purposes, the amount of property that may be bought and sold in the province - the size of the geographical area - has not altered.

Changing lifestyles that include such elements as an increased population mobility from one geographical area to another and a trend towards the acquisition of second homes in the form of summer cottages account for a part of this increase. While there are other factors (including a tendency to use real estate agents rather than conclude "private" sales of property), we are of the view that the proliferation of real estate agents hints at the attractions of property as an investment and that such attractions are, in part, attributable to the treatment accorded the taxation of property in Income Tax legislation.

Property taxation, levied by the province under the provisions of the *Real Property Tax Act*, R.S.P.E.I. 1988, cap. R-5, and its companion legislation, the *Real Property Assessment Act,* R.S.P.E.I. 1988, Cap. R-4 provides not only a means to raise provincial revenue but, at the same time, it offers somewhat of a counterfoil to the property taxation measures of the *Income Tax Act*. In deciding whether acquisition or continued ownership of a property is an attractive or feasible proposition, the prudent taxpayer, whether he/she be an investor or a homeowner, looks to the quantum of taxation that is subject to annual collection by the province, both on its own behalf and, where applicable, on behalf of the municipality. While our mandate could be interpreted to include a consideration of all incidents of taxation that impinge on property, we have chosen to limit its scope by fixing our sights on the provisions of the direct taxation of property encompassed in this provincial legislation.

The *Real Property Assessment Act* requires the Minister of Finance to make an assessment of "all real property in the province including real property owned by the Crown". This requires the Minster "to value a property for tax purposes, whether by an appraisal or by use of an adjustment multiplier". A property is appraised by entering into and inspecting a property and determining its market value.

With certain exemptions contained in Section 3 of the *Real Property Tax Act*, all real property in the province that has been assessed is liable to property taxation. The rate of this tax, as imposed by the province, is established in the *Real Property Tax Act*, but certain properties are eligible for one or more tax credits, depending on the use and/or ownership of the property, which, in effect, reduces the quantum of the tax levy. In addition to provincial property taxation, real property located within municipal boundaries (with certain exemptions) is subject to a municipal property tax levy. The municipal taxing power is limited to determining the municipal tax rates for commercial and non-commercial realty; the assessment values used by the municipality are those provided by the province and it is the province which collects the municipal tax on behalf of the municipality. Municipal property tax is rebated at prescribed intervals without regard to the province's success (or failure) in the actual collection from ratepayers at the time of this rebate. In return, municipalities are curtailed in the ways in which they may raise revenues. But they do have the certainty of funds without the expenses of administering a tax structure and without incurring any revenue instability stemming from collection difficulties.

With respect to this property taxation scheme, one of the most repeated complaints we heard during the course of our hearings was the competition and rivalries generated among municipalities and between municipal and unincorporated areas because of the existing property tax regime. While this is a matter we addressed to some extent earlier in our Report, we promised further exploration in our examination of property taxation. Table 1 outlines the property tax rates for 1989 for the incorporated areas of the province.

TABLE 1

Municipal Tax Rates, 1989

Name of Community	Status	Population	1989 Commercial Tax Rate	1989 Non-Commercial Tax Rate
Charlottetown	City	15,776	$2.290	$0.920
Summerside	Town	8,020	2.460	1.230
Alberton	Town	1,103	0.850	0.600
Borden	Town	514	1.650	0.650
Georgetown	Town	729	1.700	0.850
Kensington	Town	1,105	1.500	0.750
Montague	Town	1,994	0.830	0.770
Parkdale	Town	2,065	1.400	0.800
Souris	Town	1,379	1.700	0.800
Abrams Village	Village	334	0.120	0.120
Bedeque	Village	158	0.130	0.130
Bunbury	Village	1,054	0.600	0.370
Cardigan	Village	321	0.400	0.400
Central Bedeque	Village	199	0.100	0.100
Cornwall	Village	1,894	0.510	0.510
Crapaud	Village	332	0.450	0.400
East Royalty	Village	2,039	0.900	0.500
Hillsborough Park	Village	996	0.900	0.500
Hunter River	Village	317	0.320	0.160
Kinkora	Village	256	0.550	0.550
Miminegash	Village	288	0.500	0.250
Miscouche	Village	677	0.900	0.450
Morell	Village	359	1.210	0.700
Mount Stewart	Village	344	0.350	0.350
Murray Harbour	Village	404	0.600	0.400
Murray River	Village	476	0.370	0.320
North Rustico	Village	635	0.650	0.600
O'Leary	Village	823	0.630	0.630
St. Eleanors	Village	3,743	1.120	0.560
St. Louis	Village	135	0.450	0.450
St. Peters Bay	Village	265	0.250	0.250
Sherwood	Village	5,769	0.885	0.590
Southport	Village	1,321	0.840	0.420
Tignish	Village	960	1.100	0.850
Tyne Valley	Village	187	0.450	0.350
Victoria	Village	189	0.400	0.400
Wellington	Village	405	0.700	0.420
West Royalty	Village	2,070	0.660	0.330
Wilmot	Village	1,708	0.700	0.350

Name of Community	Status	Population	1989 Commercial Tax Rate	1989 Non-Commercial Tax Rate
Afton	CIC	826	0.070	0.070
Alexandra	CIC	259	0.075	0.075
Annandale-Little Pond- Howe Bay	CIC	352	0.045	0.045
Belfast	CIC	1,839	0.160	0.080
Bonshaw	CIC	186	0.108	0.108
Brackley	CIC	284	0.100	0.030
Brudenell	CIC	358	0.080	0.080
Carleton Siding	CIC	494	0.100	0.100
Central Kings	CIC	563	0.070	0.070
Central Lot 16	CIC	122	0.000	0.000
Clyde River	CIC	523	0.104	0.104
Crossroads	CIC	1,765	0.250	0.250
Darlington	CIC	78	0.060	0.060
Eastern Kings	CIC	1,272	0.150	0.150
Elliot River	CIC	996	0.220	0.170
Ellerslie-Bideford	CIC	463	0.070	0.070
Grand Tracadie	CIC	543	0.105	0.105
Greenmount-Montrose	CIC	323	0.000	0.000
Hampshire	CIC	327	0.060	0.060
Hazelbrook	CIC	216	0.080	0.080
Keppoch-Kinlock	CIC	453	0.210	0.210
Kingston	CIC	685	0.070	0.070
Lady's Slipper	CIC	809	0.030	0.030
Linkletter	CIC	305	0.120	0.120
Lorne Valley	CIC	91	0.000	0.000
Lot 11 & Area	CIC	780	0.014	0.014
Lower Montague	CIC	450	0.050	0.050
Malpeque Bay	CIC	1,238	0.090	0.090
Meadowbank	CIC	258	0.065	0.065
Miltonvale Park	CIC	1,080	0.180	0.090
Nail Pond & Skinner's Pond	CIC	239	0.000	0.000
New Haven-Riverdale	CIC	570	0.070	0.070
Northport	CIC	253	0.250	0.200
North River	CIC	1,732	0.300	0.250
North Shore	CIC	737	0.080	0.080
North Wiltshire	CIC	208	0.080	0.080
Pleasant Grove	CIC	194	0.075	0.075
Richmond	CIC	248	0.000	0.000
Sherbrooke	CIC	567	0.240	0.120
Souris West	CIC	327	0.030	0.030
St. Felix	CIC	359	0.000	0.000

Name of Community	Status	Population	1989 Commercial Tax Rate	1989 Non-Commercial Tax Rate
Tignish Shore	CIC	Note 2	0.600	0.600
Union Rd. (Queens)	CIC	187	0.100	0.100
Valleyfield	CIC	648	0.045	0.045
Warren Grove	CIC	220	0.065	0.065
West River	CIC	538	0.090	0.090
Winsloe	CIC	1,123	0.300	0.240
Winsloe South	CIC	143	0.040	0.040
York	CIC	Note 2	0.300	0.300

NOTES: 1. Department of Finance also lists Stanley Bridge (0 tax rate) as a CIC.

2. Department of Community and Cultural Affairs do not list population data for Tignish Shore and York.

SOURCES: Department of Community and Cultural Affairs, Municipal Directory (1989.01.20) and the Department of Finance, Real Property Tax Rates, Provincial and Municipal.

Table 1 illustrates the great variations between taxes in the municipal units. Earlier we noted how these variations affect land use and land ownership decision-making in adjoining communities. Further examination of the data reveals a number of trends and correlations we believe to be of some significance.

We examined the range of tax rates in the various types of municipalities. We noted that both the highest commercial and non-commercial rates are found in Summerside with Charlottetown being in second place in both categories.

Among the towns (except for Summerside), the highest commercial rates were found in Souris ($1.70) and Georgetown ($1.70), closely followed by Borden ($1.65), while the highest non-commercial rate was found in Georgetown ($0.85). Alberton, with a non-commercial rate of $0.60 and a commercial rate of $0.85, was at the lower range of the taxation scale, even though Montague (at $0.83) offered the best rate for commercial properties among the towns.

Among the villages, Morell's commercial rate of $1.21 was tops and its non-commercial rate of $0.70 was second only to Tignish ($0.85), which had the third highest rate ($1.10) for commercial properties. St. Eleanor's, with a rate of $1.12 for commercial properties, had the second highest commercial rate among villages. At the low end of the scale, there was Central Bedeque which applied a rate of $0.10 for all types of properties, followed closely by Abrams Village ($0.12) and Bedeque ($0.13).

When we examine Table 1 with respect to Community Improvement Committees, the highest tax rate for both commercial and non-commercial properties was imposed by Tignish Shore ($0.60). Other Community Improvement Committees near the top end of the scale are Crossroads ($0.25 for all properties), Winsloe ($0.30 commercial and $0.24 for non-commercial), North River ($0 30 commercial and $0.25 non-commercial), Sherbrooke ($0.24 commercial) and Northport ($0.25 commercial). At the other end of the range, there are 6 Community Improvement Committees which have no rate: Central Lot 16, Greenmount-Montrose, Lorne Valley, Nail Pond & Skinner's Pond, Richmond and St. Felix.

The diversity of rates no doubt reflects the services the municipalities can and do provide. Community Improvement Committees with diminished responsibilities would naturally be expected to have lower tax rates than towns and villages. But this is not always so: the analysis of the range shows tax rates in some villages are substantially higher than in some towns and tax rates in some Community Improvement Committees exceed those of many villages. In some instances, the tax rates in Community Improvement Committees may even approach the rates of the towns.

While it might be expected that larger populations would provide a tax base sufficient to have a lower tax rate, the data generally illustrates precisely the opposite is often the case. Only a few exceptions - such as finding the two least populous towns (Borden and Georgetown) have among the highest tax rates among the towns - bears out the initial premise. Generally, however, it is places with bigger populations and/or greater population densities that have higher tax rates.

Perhaps these trends are a reflection on the expectations and anticipations of the ratepayers in their areas. In other words, as a municipal area changes in character from one that is essentially rural to one that has more urbanized features, this change may cause the ratepayers to seek a higher level of service and/or new services to meet their perceived needs and/or the changing status of the community.

Several recent studies have shown that population growth and/or residential growth does not produce a *net* growth in the taxation base, contrary to long-standing assumptions. For example, the "Financial Analysis of Residential Development: A Case Study for Brighton Township", prepared in 1988 by the Ontario Ministry of Municipal Affairs, showed that residential property was costing the municipality more to service than it provided in revenue. The Township was losing, on average, $32 annually for each residential property, while the Northumberland and Newcastle School Board that provided educational services for students in the Brighton area was losing $400 annually for every residential property. Commercial and industrial properties in the urban areas and farms in the rural areas, in effect, were supporting the smaller residential properties. Several American studies also have reached the conclusion that, contrary to most assumptions, residential growth results in a net benefit loss for municipalities. Encouragement of commercial growth then becomes more than an objective to enlarge the quantum of the tax base; it provides a means of preventing non-commercial taxes from rising to their proper, full recovery level.

The existing tax legislation permits municipalities to levy separate and distinct rates for commercial and non-commercial properties. Both Charlottetown and Summerside, together with another 7 towns, 19 villages and 8 Community Improvement Committees, have availed themselves of this opportunity. Eleven villages and 40 of the Community Improvement

Committees adopted the same rate on all properties in their jurisdiction. Of the 36 municipalities (40.5%) which have differential rates between commercial and non-commercial properties, *none have a commercial rate that is lower than their non-commercial rate*. This is a significant observation.

The direct tax on property is grounded in the theory that the tax is being levied on wealth. What then is the reason for a commercial/non-commercial designation? Such a distinction would appear to be well justified in the absence of user fees for such municipal services as sewer, water and garbage collection. To a more limited extent, a costlier rate for commercial enterprises can be argued in terms of other municipal services. Fire protection, for example, may be more expensive to provide in relation to the commercial sector, where businesses may have greater fire risks than residential properties or where certain business components may be such that special equipment and training to provide adequate fire protection would exceed what is necessary for households. The provision of street lights, sidewalks and roads are municipal services that, arguably, provide greater benefit for commercial properties than noncommercial ones. While the benefits the average non-commercial taxpayer derives from these services are largely confined to members of his/her immediate household, commercial taxpayers obtain benefits from these services for both their customers and their employees, as well as any other commercial businesses with which they have dealings. This may have been one of the traditional foundations for a differential tax rate between commercial and non-commercial properties and is still a valid reason for distinctions in municipalities where the commercial core has the benefit of more municipal infrastructure (sidewalks, street lights, for example) than residential parts of the community.

To some extent, then, such arguments can continue to be made. But, more and more it would appear that the balance is beginning to tip the other way. Municipalities are becoming involved to a greater extent in providing services and benefits directly aimed at non-commercial ratepayers and their families. Increasingly, municipalities are providing recreational facilities and programs for the enjoyment of individuals. Expenditures are being made for the aesthetics of the community to make it a pleasant place in which to live. Such services are of benefit as well to commercial taxpayers, for improved aesthetics will also make the community a pleasant place in which to work and shop, just as an expanded recreational base will be an enticement to stimulate more commerce. While user fees are imposed for both these kinds of benefits and the services traditionally provided, full cost recoveries from sewer and water users are likely to be part of their fee structures while social service components are more apt to be subsidized by the municipality.

In addition to a change in emphasis among the recipients of municipal services, there is also a change among ratepayers that must not be overlooked. While the traditional model we describe is no doubt an over-simplification, we would suggest that in the past, local businesses owners had a more predominant role in municipal affairs than they do today. Their interest, at times, may have been self-serving but their presence ensured commercial tax rates were sufficiently in tandem with non-commercial rates to be relatively fair. Today, municipal tax rates are set by residents of the municipality while many businesses are owned by non-residents, whether owners be multi-national corporations or local people who live in an adjoining municipality. The system, therefore, contains an inherent bias: it allows those who decide what the differential rate shall be (between commercial and noncommercial) to be persons with a vested interest in shifting the tax burden to a sector that does not necessarily have a voice. Where this occurs, the only effective way these commercial ratepayers can "vote" is with their feet - by moving their enterprises outside the community.

We are of the view that this situation must be remedied and we proposed earlier that the municipal structure be altered to remove "adjacent communities" as rivalries in this regard. That move alone, however, will not solve the problem. Indeed, by itself, it could make the dilemma that much greater, for instead of moving from one municipality to another with a lower tax base, it would give commercial property owners the incentive to move from one municipality with a municipal property tax to an unincorporated area that has only a provincial levy. *Effective land use controls are necessary to prevent such a trend in the absence of any adjustments to taxation practices that now exist.*

To remove what we feel are taxation inequities in this system, we can suggest various alternatives. One corrective measure would be to allow the municipalities to strike a single tax rate, applicable on all properties, whether they are commercial or non-commercial. This is the practice seen in many Island municipalities already. (A variation on this would be a legislated ratio that prescribes some formula on the allowable range between non-commercial and commercial rates, a formula that must be followed by municipalities that opt for a two-tiered rate structure.) Another possibility is to follow the practice used in British Columbia where a non-municipal levy of $1.30 per $100 was added to all properties, both commercial and non-commercial, outside incorporated areas. This ensures ratepayers obtaining services from the province - services that would otherwise be assumed by a municipal structure - contribute more to the payment of them than do municipal ratepayers. However, this formula does not eliminate uneven tax rates among locales in close proximity to one another. None of these proposals would wipe out municipal rivalries for business or remove the financial incentive for commercial relocation in unincorporated areas.

The problem was addressed in Britain as part of its reform of municipal taxation. While part of this package included the replacement of residential property taxes with a highly unpopular poll tax, the much publicized reaction to the poll tax should not overshadow the reform in the commercial component of the property tax structure, a reform that seems to have been received with relatively quiet acceptance.

Philip H. White described the "British Experience in Property Taxation" in an address to the "Real Property Taxation Conference: A Community of Interests" (held at the University of British Columbia in May of 1989). There, he concluded that the new system for local government finance would include provision so that "the mill rate for non-residential property will be the same throughout the country". Proceeds from the tax were to be "distributed to local authorities in proportion to the number of adults in their area".

In assessing the potential effects of such a move, Professor White gave this analysis of the likely reaction by municipalities:

> While many municipal politicians are likely to be displeased that nondomestic properties are no longer part of the municipal tax base, they will probably soon discover that the new system offers its own opportunity for them to favour the electorate. *As long as non-domestic property was subject to a locally-determined property tax, there was always a case to be made for granting planning permission for new commercial and industrial development - even though some of the electorate were opposed to any further development. But now that new development will no longer confer any tax-base benefit on the local authority, there is no reason to oppose those voters who are against new development.* The prospects for new shopping centres, hypermarkets, leisure centres, and industrial parks have never been particularly good in the UK and can now be expected to deteriorate further. [Emphasis added.]

The reasoning behind such a move, as explained by Professor White, held a number of commonalities with the difficulties we have identified here.

> In the case of nondomestic property, the Government has criticized the traditional form of the property tax in which the tax is levied locally for the exclusive benefit of the local authority concerned on several grounds.
>
> One complaint is that *the property tax represents an element in overhead costs which can vary erratically* from year to year and *from place to place.* Moreover, in the short run it is very inflexible in that changing the place of business in order to alleviate the property tax burden is seldom practicable.
>
> More generally, *wide variations in the burden of property taxation - caused by widely varying mill rates - are considered to be damaging to economic efficiency as businesses face different cost structures which are unrelated to their competitive strengths and weaknesses.*
>
> The Government considers that *on the grounds of economic efficiency alone there is merit in a scheme which does not distort the competitiveness of business simply because of differences in location between one municipality and another.* But *nondomestic property tax unreformed also failed the accountability test.*
>
> *There is no voting right attached to the payment of nondomestic property tax and therefore the local authority is not answerable to business taxpayers who provide a large proportion of the income.* [Emphasis added.]

Quoting from the British report on the tax system, Professor White added:

> "Nondomestic rates not only fail the test of accountability in terms of those who pay them and those who impose them. They also severely distort the link between the cost of providing local services and the costs faced by the local domestic taxpayers of an authority."

Our initial reaction is to urge the adoption of changes in the commercial tax levy so that a single rate is adopted on a province-wide basis. A portion of revenue generated would be allocated to the province and the remainder to the municipality. Distribution among the municipalities would be in accordance with population proportions. Such a move would create a "level playing field", removing rivalries among municipalities for commercial ventures and allowing those communities that wish to remain essentially residential to do so. In addition, such uniformity would eliminate one financial factor that otherwise encourages businesses to locate outside municipal perimeters.

On the other hand, we recognize that such a major change in property taxation should be subject to a more detailed examination than we are prepared to grant it. Moreover, both municipalities and the commercial sector should be given the opportunity to examine such a measure and comment upon it prior to its adoption.

Accordingly, we recommend

- **THAT the Department of Finance review the present property tax regime with particular regard to identifying the various effects of adopting a revenue-neutral alteration in the commercial tax levy so that a single provincial-municipal rate is adopted on a province-wide basis with redistribution of the municipal portion of the tax among municipalities in accordance with population proportions; and that the findings of such a review be subject to public discussion before changes are implemented.**

One of the issues obviously facing this Commission was that which frequently has been referred to as the "double-taxation" of property owned by non-residents. Such short-hand is a mis-nomer.

The provisions of the *Real Property Tax Act,* R.S.P.E.I. 1988, Cap. R-5, relevant to this issue are contained in Sections 4(1) and 5 of this legislation. These are as follows:

> 4. (1) The Minister shall levy a rate of tax on all taxable real property in the province at the following rates:
>
> (a) on commercial realty, $1.50 per $100 of assessment;
>
> (b) on non-commercial realty, $1.50 per $100 of assessment,
>
> subject to a reduction of 10¢ per $100 of assessment on that portion thereof assessed as residential property.
>
> ....
>
> 5. A person in whose name non-commercial realty is assessed pursuant to the Real Property Assessment Act who is a resident person or a resident corporation is eligible to receive a tax credit at the rate of 75¢ per $100 of assessment in accordance with the regulations and the conditions set out in the regulations.

The applicable Real Property Tax Regulations in relation to this issue are found in Sections 24, 25, 26 and 27, which state:

> 24. (1) For the purpose of section 4.1 of the Act
>
> (a) a person shall be deemed to be a resident person if he resides in the province for 183 consecutive days or more each year;
>
> (b) a corporation shall be deemed to be a resident corporation if 50% or more of the voting shares of the corporation are held by persons who qualify as residents under clause (a);
>
> (c) joint tenants and tenants in common shall be entitled to the credit if half or more of the tenants qualify as residents under clause (a).

(2) No person or corporation shall be entitled to the credit referred to unless the property is assessed in the name of that person or corporation pursuant to section 8 of the *Real Property Assessment Act* R.S.P.E.I. 1974, Cap. R-5.

25. Proof of residence may be required and where required, a person or corporation shall complete a form approved by the Minister.

26. Where, in any year a resident person or resident corporation transfers real property to a non-resident person or non-resident corporation and the Minister determines that in the next succeeding year the nonresident person or non-resident corporation would qualify as resident under section 24, he may grant resident status to the non-resident person or nonresident corporation effective from the date of transfer, upon the non-resident person or non-resident corporation actually establishing residency.

27. Where, in any year the Minister determines that in the next succeeding year a non-resident person or nonresident corporation would qualify as resident under section 24, he may grant resident status to the nonresident person or non-resident corporation effective from the date of transfer, as outlined in section 26 or January 1 of the preceding year immediately before actually establishing residency, whichever comes first.

Provisions of the legislation, in fact, provide an equal levy for commercial and non-commercial realty. However, a system of tax credits is of potential application and one of these tax credits is available to some properties if the property owner resides in the province for 183 consecutive days, or more, each year.

To understand the application of these credits, it is necessary to examine what is meant by "commercial" and "noncommercial" realty. These terms are defined in Sections 1(d) and (i) of the *Real Property Assessment Act* (and the provisions of Section 1(b) and (k) of the *Real Property Tax Act* incorporate the same definitions in the latter piece of legislation). Sections 1(d) and (i) of the *Real Property Assessment Act* provide as follows:

1. In this Act . . .

(d) "commercial realty" means real property owned by the Crown or any person, used or occupied by any industry, trade, business, profession, vocation or government business and includes real property used or occupied

(i) in the administration of the Workers' Compensation Act R.S.P.E.I. 1988, Cap. W-7,

(ii) by a non-profit organization which would, if the property were so used or occupied by a business, be treated as commercial realty,

but does not include

(iii) farm property, and without limiting the generality thereof, poultry farms, hog farms and experimental farms,

(iv) nursery gardens and market gardens,

(v) timberlands,

(vi) mobile homes not used for the conducting of any business, apartment buildings, rooming houses and bunk houses,

> (vii) that portion of a hotel or motel used solely for the purpose of lodging for the public,
>
> (viii) buildings owned, occupied or used by a bona fide farmer as defined in section 4 and operated primarily to store or package products raised on his own farm, or raised on land occupied or used by him for farming purposes; . . .
>
> (i) "non-commercial realty" means all real property except commercial realty; . . .

The provisions of Sections 4(1) and 5 of the *Real Property Tax Act*, read in conjunction with these definitions, indicate there are several permutations and combinations possible with respect to the rate of tax and the tax credit(s) applied to the property. We read the legislation in such a way that 6 basic possibilities arise: (1) A property that is commercial realty, which would attract a tax levy of $1.50/$100 with no credits. (2) A property that is categorized as commercial realty but that is used as "residential" would attract a tax levy of $1.50/$100 with a tax credit of 10¢/100. (3) A property that is categorized as non-commercial realty, that is used as a residential property and that is owned by a resident person or corporation. This would attract a tax levy of $1.50/$100 with credits of 10¢/$100 and 75¢/$100. (4) Non-commercial realty that is used as a residential property and that is owned by a non-resident person or corporation. This would attract a tax levy of $1.50/$100 and a credit of 10¢/$100. (5) Non-commercial realty that is not used as residential property and that is owned by a resident person or corporation. This would attract a tax levy of $1.50/$100 with a credit of 75¢/$100. (6) Non-commercial realty that is not used as a residential property and that is owned by a nonresident person or corporation. This would attract a tax levy of $1.50/$100 with no tax credit. In other words, the net taxation effect on a property in this last category would be the same as for a property that is commercial. Where a property has "mixed uses", such as a residential home that has an office as part of the property, a combination of two or more of the six categories cited above would be used in apportioning the applicable tax levies and credits.

The idea of imposing a greater tax burden on non-resident landowners was considered by the Royal Commission of 1973, where, at page 72, its report had this to say:

> The question of higher taxes on non-resident landholdings was raised frequently in the hearings and was tentatively recommended by this Commission in its interim report. It is unlikely that such a move would greatly curtail the rate of non-resident purchase, nor reduce the pressure for shoreland acquisition. Rather, it should be regarded as a means of augmenting tax returns to the provincial treasury.
>
> The Commission has been advised that the imposition of a higher non-resident tax rate might well be regarded as discriminatory, particularly in the case of nonresident Canadians. Moreover, it seems unlikely to instill the newcomer with a sense of community belonging.
>
> In the case of alien non-residents, a certain justification for a higher tax rate can be made on the grounds that the alien does not contribute to Canadian income tax revenues, which in turn assist in covering the cost of a variety of public services which he uses while in Prince Edward Island. However, in view of the minimum maintenance requirement recommended for all non-residents, as well as the

> imposition of substantially higher taxes on undeveloped lots within the coastal zone, (see Recommendations 14 and 18), the Commission has modified its earlier recommendation with respect to this matter.

In the end, that Royal Commission recommended minimum maintenance requirements for certain categories of landowners, including nonresidents, and "substantially higher taxes" on cottage lots that remain undeveloped for more than three years after their acquisition. Neither of these recommendations were implemented but a change in the property taxation regime, brought into being in 1987, in effect resulted in higher taxation for many nonresident landowners of non-commercial property.

We found, in our hearings, considerable inaccuracies in the public perception of this taxation regime, no doubt arising because the media has labelled the system as one of "double taxation". In point of fact, there are situations where, for example, two summer cottage owners with identical assessments would have different tax bills based on the residency criteria as the eligibility for one of the tax credits. On the other hand, the system does not mean that residents always enjoy an advantage over non-residents. All owners of commercial realty face the same levy, usually with no credits, whereas non-resident owners of non-commercial property used for residential purposes enjoy a tax credit. Consequently the local small business owner of a commercial property assessed for $100,000 would pay a provincial tax of $1,500, whereas the summer cottage owner with only seasonal residency in the province and with a cottage assessed for $100,000 would pay $100 less.

This measure was solely a revenue one; it was not introduced to deter non-residents from purchasing property in the province. That has been the consistent position of the Province and we accept this. If the objective had been to deter nonresident acquisitions, the Province had an effective means already in place to do so - namely, the requirement that nonresident purchases above minimal size obtain the consent of the Lieutenant-Governor-in-Council. As we have noted elsewhere, the past record of its "consents"/"denials" has showed little indication of a policy aimed at discouraging non-residents from acquiring property in the province.

Nor is the quantum of tax involved likely to operate as a deterrent for most prospective purchasers. Consider, for example, a summer cottage, assessed for taxation purposes at $50,000; this would be an "average" (or better) recreational property in many locations in the province. If that location is outside a municipality - as most cottages are - the annual property tax liability for the non-resident owner would be $700. While it may be a callous position to take in some *very exceptional* circumstances, we are of the opinion that a ratepayer who can afford the luxury of a second home sufficiently removed from their normal place of residence to have it in another province (or country), can afford the quantum of taxation being imposed. Moreover, if the tax increase that resulted from the change in the legislation has been a deterrent to the acquisition or retention of the cottage mentioned in our example then we question the owner's financial ability to own what amounts to a luxury and/or the owner's commitment to accept the burdens inherent in owning property in the province.

Taxpayers who have not been eligible for the tax credit specified in Section 5 of the *Real Property Tax Act* have mounted a vocal lobby in opposition to what they term "double taxation". An Association Against Double Taxation has been formed and its members have banded together in challenging the legalities of Section 5 in the courts. We make no comments on the merits of their case that has been before the courts for some time. But the Association Against Double Taxation appeared before us and therefore we accept this opportunity to respond to their presentation.

The Association Against Double Taxation raised two essential points: that the legislation is discriminatory and that it compels non-residents to assume more than their fair share of taxes.

Insofar as Section 5 distinguishes between ratepayers who are and those who are not eligible for a tax credit, the claim made by the Association is a valid one. The provision has the effect of imposing a greater incidence of taxation on persons who, all other things being equal, do not reside in the province for a prescribed portion of the year. Taxation measures, however, are full of provisions that make distinctions. The *Real Property Tax Act* provides numerous examples, many based on land use. Landowners incur distinctions in their tax liability because they do or do not live in a municipally-incorporated area. While some types of distinctions have been rendered contrary to law, it is not our role to determine whether one based on the length of residency (if any) in a jurisdiction is one of these.

We are concerned about the charge that Section 5 of the *Real Property Tax Act* is unfair. A high quality revenue system is characterized by principles of equity and fairness; it should not raise revenue by adopting the politically popular adage: "Don't tax me, don't tax thee; tax the fellow behind the tree". Those who have been seeking reform on behalf of nonresident property owners apparently consider the revenue-producing motive inherent in Section 5 as little more than the sentiment of this jingle actually at work!

We have examined the Province of Prince Edward Island Budget Speech and Estimates for 1990 presented by the Honourable Gilbert R. Clements, Minister of Finance and Chairman of the Treasury Board, on March 13, 1990. The 1990-91 Budget Estimate showed that the province expected to raise $298,565,500 from the taxes it imposed. Table 2, extracted from page 12 of this document, shows the relationship between property taxes and other forms of taxation levied by the Province.

TABLE 2

Revenue Source	1989-90 Budget Estimate	1989-90 Forecast	1990-91 Budget Estimate
Taxes			
Health Tax on Liquor	8,904,300	9,245,700	9,615,500
Health Tax on Tobacco	13,000,000	12,800,000	18,985,000
Real Property Tax	25,100,000	25,870,000	26,645,000
Sales Tax	94,250,000	93,500,000	101,350,000
Gasoline Tax	17,200,000	18,000,000	21,640,000
Income Tax - Personal	93,050,000	99,750,000	103,200,000

Insurance Premium	1,300,000	1,400,000	1,850,000
Income Tax - Corporate	17,600,000	12,740,000	13,150,000
Corporation Capital Tax	1,000,000	800,000	1,480,000
Fire Prevention Tax Act	100,000	100,000	150,000
Room Tax Act	-	-	500,000
	271,504,300	274,205,700	298,565,500

An examination of Table 2 shows that there are 11 categories of taxes, the most lucrative being sales taxes and personal income tax. The real property tax is a very distant third as a revenue generator; indeed, the combined totals for the health tax on liquor and tobacco were expected to exceed the revenue derived from real property taxes in 1990-91. The real property tax amounted to less than 10% of all revenue derived from provincial taxes. When other sources of provincial revenue were taken into account, the proportion declined more ($26 million in relation to total revenue of $372 million from all sources in the province). Once revenue from the Government of Canada is taken into account, the amount derived from real property taxation as a proportion of all revenue declines to 3.8% of the total.

The Association Against Double Taxation, in its presentation to us, argued that "non-residents derive no benefits from the high-cost services provided by the government, such as health and education. The non-resident's contribution to the economy through tax dollars and otherwise must be considered in proportion to the cost of benefits received."

Let us consider this argument for a moment. At one extreme, it is possible to be the owner of property in the province and yet have never set foot in the jurisdiction. Such a property owner could argue that his/her ownership of property makes little or no drain on provincial expenditures and hence his/her contribution to the coffers of the Finance Department should be very nominal. Nevertheless, we suspect that if our absentee landowner should decide to visit his/her holdings, there would be an expectation that roads, health care, police and fire protection, and an assortment of other public services would be readily available.

In the other extreme, the "non-resident" landowner, under the taxation provisions, may be, in fact, a seasonal resident who lives in the province anywhere up to six months. We cannot accept the argument put forward by the Association that seasonal residents derive no benefits from either health or education. We can accept the position that the benefits seasonal residents derive from such services are in a lesser proportion than the benefits derived by more permanent residents. If property tax were the sole revenue source or made up a greater share of revenue, seasonal residents would have much firmer foundations on which to argue the inequities of Section 5.

To what other revenue sources do property owners who are seasonal residents make a contribution? Whether or not they pay any tax by way of the health taxes on liquor and tobacco is a matter of lifestyle. Seasonal residents do contribute to the provincial treasury through sales tax and gasoline tax - but so, too, do visitors whose claim to "benefits" are far more marginalized. Moreover, both of these taxes have discretionary elements - hinging on lifestyles - since decisions to purchase gasoline and products subject to sales tax are to some extent a matter of the taxpayers' spending habits. Seasonal residents might be making a contribution to revenue sources through the fire prevention tax, the smallest of the revenue sources from provincial taxation and one which has a more direct linkage with potential benefit to be received than most of the other revenue sources. *In most circumstances, seasonal residents would not be paying any tax to the province in any of the remaining five categories. In other words, seasonal residents escape tax liability in about half of the provincial taxation categories.*

In "History, Philosophy, Principles and Trends on Real Property Taxation", a presentation prepared by the British Columbia Assessment Authority and presented at the Real Property Taxation Conference in Vancouver in May of 1989, equity and fairness principles in relation to property taxation were considered. The subject of equity in taxation was addressed in these terms:

> Equity in taxation means fairness - a fair method of distributing the tax burden among all taxpayers within a taxing jurisdiction. There is disagreement, however, about what constitutes a fair distribution. . . .
>
> The principle of benefits received dictates that equity is achieved when individuals are taxed according to the amount of benefits they receive from the goods and services supplied by local government. In other words, goods and services should be paid for by their users.
>
> There are obvious problems in the application of this principle. It is difficult to measure the exact amount of benefit any particular person derives from expenditure on a good or service. Moreover, individuals from outside of the taxing jurisdiction may also benefit from parks, roads and other locally provided goods and services.
>
> ....
>
> Taxation is grossly unpopular. No one likes to pay taxes. . . .
>
> *Ultimately, equity and fairness are in the blend of taxes. Property taxation is only one ingredient in the mix of income taxes, sales taxes, severance taxes, property taxes, etc.* [Emphasis added.]

Opinions are sharply divided on the equity of the provisions of Section 5. Residents who appeared before us spoke both for and against the distinctions made between residents and nonresidents. Those who opposed what they termed "double taxation" usually conceded they had a personal biase by way of a relative or friend who was within the "non-resident" category. Opinion is also divided among non-residents themselves. While the Association Against Double Taxation has adopted one position, we also encountered non-residents who were not part of this protest. Typical of these was a seasonal resident, concerned about other land use issues, who indicated the financial effect of Section 5 was nominal in relation to both the worth of his property in the province and the quantum of property taxation he was accustomed to paying in the jurisdiction of his principal residence. In addition, he accepted the fact that, in his words, "the Province provides services and the Province needs the money."

The Association Against Double Taxation also presented their arguments in emotional terms. Essentially, it was contended that this taxation measure was a signal that they were being treated as "intruders", whereas they had a love for the province being challenged by this provision. Islanders who live in the province on a full-time basis can appreciate these arguments: we too love the province, but we recognize that this love comes with a price tag in the form of a high incidence of taxation.

Finally, let us put this controversy in the perspective from which it originated. By denying non-resident property owners of non-commercial property the tax credit contained in Section 5, the province was able to enhance the public purse by an amount we understand to be some $1.25 million in the first year of the provision. Depending on a variety of factors, such as land acquisition costs, construction standards and so forth, *the revenue involved can be equated with the cost of construction for one kilometer of highway!!*

Taking all of these factors into account, we find the provisions of Section 5 of the *Real Property Tax Act* to be fair and equitable and we are not prepared to recommend any changes to it.

Moreover, in the event that the legal challenge to this legislation is successful (and, we are not suggesting by this what we think its eventual outcome might be) then we are of the view the province should explore alternative means of ensuring non-resident landowners and/or seasonal residents assume an equitable burden of tax liability in relation to the province. One possibility in this regard is the imposition of a land transfer tax, applied when the ownership of recreational properties changes, and based on a percentage of the selling price of the property. (Such a measure is found in other jurisdictions, such as the Province of Ontario, where the maximum rate of 20% of the value of the consideration given for the land is imposed on "non-residents"; there, "non-residents" include Canadians who are not ordinarily resident in Canada and aliens who do reside in Canada.)

Accordingly, we recommend

- **THAT the province retain Section 5 of the *Real Property Tax Act* and, in the event that the provisions of Section 5 are successfully invalidated through legal proceedings, then the province move to replace any lost revenues through the introduction of an alternative form of taxation.**

The relationship between property taxation and land ownership and land use is subject to special considerations where certain uses of the land are involved. This is so in numerous jurisdictions and Prince Edward Island is no exception. (A sample of these special considerations in relation to other provinces can be found in Appendix D of Volume II.)

The distinctive treatment accorded agricultural land begins with the *Real Property Assessment Act*. There, the definition of "commercial realty" specifically excludes not only farm property and certain farm buildings, as well as such agricultural-related enterprises as "nursery gardens and market gardens". Because these properties are "non-commercial", they would be subject to the "non-commercial" tax rate. This makes little difference from the standpoint of the provincial levy until the tax credits are taken into account. The effect of Section 5 of the *Real Property Tax Act* is to provide a credit of 75¢/$100 for many farm properties.

Not only do farm properties qualify for a "non-commercial" tax levy, they are potentially eligible for special rules of assessment under the provisions of Section 4 to 8 inclusive of the *Real Property Assessment Act*. These provisions are as follows:

> Farm Assessment
>
> 4. (1) "Farm property" means arable land and complementary buildings, operated as a farm enterprise by a bona fide farmer and farm property includes land leased from the Crown and operated as part of a farm enterprise, but excludes land leased or rented from owners who are not bona fide farmers.
>
> (2) "Farm enterprise" for the purpose of this Act means (a) a farm operation where a bona fide farmer has owned and operated at least a twenty acre area of farm property either for more than ten years, or from which gross sales for the previous calendar year were in excess of $2,500; or
>
> (b) a poultry, hog, greenhouse, or market garden enterprise, owned and operated by a bona fide farmer, either for more than ten years or from which gross sales for the previous calendar year were in excess of $10,000.
>
> (3) Bona fide farmer means a person who owns a farm and who
>
> (a) spends more than fifty percent of his working time on the farm; and
>
> (b) receives annually more gross cash income from the sale of products of the farm than from wages for work performed off the farm; or
>
> (c) a firm, corporation or syndicate registered in the province and having at least one officer who qualifies under clauses (a) and (b) and that is solely engaged in farming and storing or packaging, or shipping products grown on land in the province where land is owned by the firm, corporation, or syndicate.
>
> (4) Notwithstanding subsections (1), (2) and (3), a farm assessment may apply to the farm property of a person who in the year immediately preceding the current assessment year operated a farm enterprise, but who in the current assessment year does not operate a farm enterprise by reason of illness or disability.
>
> 5. In addition to any other assessment of real property under this Act, all farm property shall be assessed by the Minister for a "farm assessment", and such farm assessment shall be at the value indicated by the capability of the arable land, the utility of the complementary buildings, and such economic factors defined by regulation.
>
> 6. Where a bona fide farmer who was the owner of a farm property that qualified for a farm assessment
>
> (a) died before this section comes into force; or
>
> (b) dies on or after the date this section comes into force,
>
> the farm property is eligible for a farm assessment so long as the widow or widower of the deceased farmer resides on the farm property and as if the widow or widower were a bona fide farmer.

7. A change in any farm assessment arising out of a decision of any reference or appeal under this Act, shall not affect any other assessment unless that other assessment is itself changed as a result of a reference or appeal under this Act.

8. (1) Where less than all of a real property is used for farming purposes, the farm assessment shall be calculated only on that portion used in a farm enterprise.

   (2) Where real property is in use by or for more than one farm enterprise, the farm assessment shall be calculated on the portion of the real property attributable to the use of each farm enterprise.

Under the provisions of Section 4(2) of the *Real Property Tax Act*, property that is eligible for a farm assessment is not taxed on the "market value" but on the "farm assessment value".

We were not satisfied with the application of these taxation rules. It was our understanding there was no mechanism to determine whether a taxpayer qualified as a bona fide farmer. Taxation officials sometimes determined on the basis of hearsay who they felt were bona fide farmers. If they excluded someone, it was open to such a taxpayer to appeal their situation. If they included someone that did not meet the criteria, there was no incentive for the taxpayer to protest the error and the department had no methodology to determine the accuracy of their judgment. We are of the opinion that a taxpayer seeking a special status under taxation rules should be required to apply for such status and establish that the criteria can be met.

At the present time, there is no linkage made between these taxation provisions and the land ownership controls imposed by the *Lands Protection Act*. It would appear that a landowner in violation of the provisions of the *Lands Protection Act* would still be entitled to the special concessions afforded farmers and farmlands, providing the taxpayer could fit within the provisions of the property tax measures. We are of the view that such a linkage should be established, not only to provide integrity and consistency to the system, but also to add a further strengthening, however indirect, to the enforcement of the *Lands Protection Act*.

Moreover, if farm land is to be subject to special concessions in the taxation scheme, then farm land use should be committed for that use. Those who are using agricultural land are given two concessions: their land is subject to special rules of assessment so that "highest and best use considerations" do not apply and the assessment is then eligible for a noncommercial levy that allows tax credits for which commercial users cannot avail themselves. Taxation concessions then should be tied into land use policies for the long-term preservation of farm land for agricultural use.

Accordingly, we recommend

- **THAT the special considerations now granted farm property and *bona fide* farmers under the provisions of the *Real Property Assessment Act* and the *Real Property Tax Act* be granted only where the taxpayer has filed with the province a statutory declaration as to the taxpayer's eligibility for such special considerations and the taxpayer's compliance with the provisions of the *Lands Protection Act*; and**

- **THAT land use policies for the long-term preservation of farmland for agricultural use should be linked to these taxation measures.**

The *Real Property Tax Act* contains provision for tax sales where property taxes remain unpaid. These provisions are clearly stated as follows:

> 16. (1) Where taxes levied pursuant to this Act are overdue and unpaid, the Minister shall mail, within twenty-four months from the date on which the taxes became overdue and unpaid, to the person in whose name the tax is levied or to the person substituted for him pursuant to subsection 12(3), a notice in a form prescribed by regulation stating that the tax is overdue and unpaid and that the real property is liable to be sold by the Minister in accordance with this Act.
>
> (2) Where taxes are overdue and unpaid twelve months from the date of the notice stating that the real property is liable to be sold, referred to in subsection (1), the Minister shall within sixty days send by registered mail on a form prescribed by regulation to the person referred to in subsection (1), a notice stating that the real property shall be sold.
>
> (3) Subject to subsection (5), where taxes on real property are overdue and unpaid seven days after mailing of the notice prescribed by subsection (2), the Minister shall sell the real property in accordance with the regulations.
>
> (4) No sale of real property is to be held under this Act unless notice thereof in the form prescribed by regulation has been published
>
> (a) at least once in each of two consecutive weeks in a newspaper having general circulation in the area where the real property is located; and
>
> (b) in two consecutive issues of the Gazette.
>
> (5) Where taxes mentioned in subsection (3), and all costs of any sale proceedings to the date of payment are paid to the Minister at any time prior to the sale under subsection (3), the sale shall not be held.
>
> (6) The Minister shall mail to the Registrar of Deeds, a copy of all notices prescribed by this section and mailed by the Minister to persons having overdue and unpaid taxes.
>
> (7) All money received by the Minister as the proceeds of any sale of real property under this Act is to be disbursed in the following order of priority:
>
> (a) first, in payment of the expenses of advertising and sale;
>
> (b) second, in payment proportionally of all
>
> (i) tax arrears and all taxes owing on the real property and being unpaid to the date of sale and accrued interest thereon,
>
> (ii) unpaid taxes levied on the real property prior to January 1, 1972; and
>
> (c) third, to the person in whose name the tax has been levied for collection of which sale is made by the Minister.

The legislation is quite express in its provisions: once taxes are overdue and unpaid the Minister of Finance has a mandatory responsibility to begin collection procedures and, should the taxes remain unpaid, tax sale proceedings are to be undertaken. The time periods are so specific that tax sales on such properties would be expected, in the normal course of events, to take place little more than 12 months after the taxes are overdue and unpaid. In any event, the tax sale must, by law, be underway 38 months from the date the taxes became overdue because they have been unpaid either in whole or in part on the date prescribed by regulation.

The law is not being followed by the Department which has a "policy" that is inconsistent with the legislation. We understand it is departmental "policy" not to have sale proceedings until the taxes that are overdue and unpaid reach an amount in excess of $1,000 and that the reason for this policy is to make the sales "worthwhile".

This is but one example, albeit one of the more clearcut examples, where departmental "policy" has superseded the law, where officials have turned a blind eye to the very legislation they are paid to administer in the name of "policy".

Departmental "policy" in this instance is difficult to understand. Not only does it discriminate against taxpayers, effectively sheltering those with small accounts from penalties for a number of years, it lacks economic rationale. The expenses of the sale and its advertisement are guaranteed to the Crown under the provisions of the legislation, which also allows the Crown to have its tax arrears paid. If it requires several years for tax arrears to mount before the $1,000 mark is reached, the market value of the property is obviously not high. So why would the Crown postpone a tax sale until such time as it is more likely to be guaranteed a loss because the value of the property cannot sustain the costs of the sale and the tax arrears? The "policy" simply makes no sense.

Moreover, it would appear the "policy" has generated some frustration over the years, both on the part of communities and individuals who wish to solve ownership problems. This area of concern surfaced during our public hearings in several presentations where discussion turned to real property left in some form of "legal limbo" because of difficulties in determining ownership. Such a situation may arise where an owner dies, perhaps without a will. The owner may even be *testate* but the property may not have come to the attention of the executor or there may be several residual heirs. It may be that ownership of the property has been in doubt for quite some time. The *Quieting Titles Act* provides one avenue for dealing with these difficulties but it is not always a feasible route. Quieting of Titles legislation can only be utilized by certain claimants. Proceedings under this legislation can be costly as it usually involves legal fees and newspaper advertisements. Ultimately such expenses may form a sizeable fraction or even exceed what the land itself is worth in terms of its selling price. However, we have been made aware of instances where the value of such a property in dollars and cents does not reflect other considerations. An abandoned property that creates an eyesore for a community or a small patch that is a fertile source of weeds adjacent to otherwise orderly properties are but two of the identifiable problems.

One effective way to cope with such difficulties is through the tax sale. Property tax sales, where properties were auctioned off by the Crown for the payment of delinquent taxes, were a long-established route for curing such difficulties prior to the enactment of the *Quieting Titles Act*.

Consider, for example, a property with a fair market value of $10,000. With a tax assessment that, in effect, is 75¢/$1.00, the annual tax bill is $75. Even with interest, it would likely be a decade before the threshold of $1,000 would be reached. Very often such properties are abandoned because they have little market value so an example using a base figure of $10,000 is probably quite generous; using a market value of $5,000 or less might be more realistic. We have no idea how widespread this difficulty is but the fact it was brought up in several presentations before us indicates the departmental policy and "abandoned ownership" is a source of irritation in various localities.

Typical of the presentations was one made by a member of the legal profession who stated:

> There are countless properties in this province which are owned by numerous heirs and estates, none of whom have legal control over the land which may or may not be in productive use. The deaths of owners, without wills, leaving heirs both inside and outside the Province, legal costs plus simple human frustration and procrastination, have left good lands incapable of being acquired, mortgaged and even cultivated.
>
> Attention should also be given to the *Real Property Tax Act* to remove any doubt that the purchaser at a tax sale obtains a good and perfect title as opposed to acquiring just the title of the defaulting taxpayer. There are a number of rural properties that have had no taxes paid for a long period of time, but given the low amount of the annual taxes, the total amount of outstanding taxes is well below the Department of Finance requirements to have a property listed for tax sale. As well, if properties which are in default of the property taxes have legal defects, then the Department of Finance normally ceases any further action in re the holding of a tax sale.

We note that the Lieutenant-Governor-in-Council has cancelled certain accounts receivable under the *Real Property Tax Act* using the authority conferred in Section 26(1) of the *Financial Administration Act,* R.S.P.E.I. 1988, Cap. F-9. Order-in-Council EC191/90 of March 15, 1990, used this approach in relation to nine different accounts totalling $4,285.09. We would hope that this route is not developed as an alternative to property tax sales, for this should simply prolong the problem of ascertaining property ownership over such parcels.

Accordingly, we recommend

- **THAT the Department of Finance follow the provisions of the *Real Property Tax Act* in respect to the sale of land in satisfaction of overdue property taxes, that such sales not be halted simply because of legal defects in title and that the *Real Property Tax Act* be amended to clarify that the *bona fide* purchaser at a tax sale acquires title from the Crown and not the title of the defaulting taxpayer.**

Chapter 27

SIGNAGE

One of our terms of reference calls for us to inquire into and report on "the relationship between the quality of landscape and Government policy respecting roadside advertising". Since the term "roadside advertising" was not further defined, the interpretation of this aspect of our mandate was open to debate. In a narrow focus, the meaning of the phrase and the intention behind its usage might be construed to limit our examination and commentary to the "Highway Information Sign System" (H.I.S.S.) program, even though we understand the essence of the H.I.S.S. program is to provide *directional information* for the commercial sector in certain parts of the Province and not to facilitate roadside advertising. After consideration of what this aspect of our mandate might encompass, we opted to paint the topic with a broad brush, invoking (if need be) our authority to inquire into and report on "any matter or subject which the Commissioners may feel to be relevant to the subject of the inquiry." Accordingly, we have directed our attention to the subject of signage - whether it be directional or information for the purpose primarily of advertising and whether it be on public or private lands, so long as it is signage visible from a public roadway anywhere in the Province.

The health, safety and welfare of the general public has been the traditional basis for government regulation of signage. As a result, one of the major cornerstones in any signage control in the twentieth century has been measures to provide for traffic signs. In the Province of Prince Edward Island, the *Highway Traffic Act,* R.S.P.E.I. 1988, Cap. H-5 defines both "official traffic signs" and "traffic sign", with Part VIII of this legislation being devoted to "Traffic Signs and Directions". Regulations pursuant to the *Highway Traffic Act* include "Traffic Sign Regulations". These provisions relate to signs designed to provide safety on the public highways, such as speed signs, stop signs and so forth.

We have not made any detailed inquiry into these types of signs nor have they been the subject of particular commentary by those who made appearances before us. While there may be individual locations where improvements for aesthetic purposes can be made, we recognize that public safety can and must be of paramount consideration. In any conflict between the aesthetics of landscape and the use or placement of these types of signs, common sense dictates that public safety must be given a strong first priority.

Having said this, and without being contradictory, we do wish to offer a commentary about the entrances to the Province at Borden and Wood Islands. Because these are entry points for the motoring public, there are a number of signs not only in the usual mode of traffic signs to ensure immediate public safety, but also signs to advise motorists of certain provincial highway laws. In this sub-category of traffic signs, we think, for example, of signs that advise motorists to wear a seatbelt, to stop for school buses and so forth. The result is that the visiting motorist encounters an informational array, perhaps not likely to have much impact if the driver is simultaneously adjusting to an unfamiliar highway in the midst of heavy ferry traffic. Can some of this signage be eliminated? Can arrangements be made so that information of this type is available during the crossing itself so that, for example, the announcement to return to vehicles is coupled with a safety announcement on the need to wear seatbelts? It seems counterproductive to have measures to reduce signage in the Province if visitors are first greeted by a major display of signed messages. While this point is not a priority matter - and we freely acknowledge we are not in a position to provide a definitive solution - we recommend

- **THAT the Province examine its traffic signage at its entry points with the objective of attempting to reduce, wherever possible, the signage impact now existing in these areas.**

In addition to traffic signs there are a number of highway signs erected and maintained by the Department of Transportation and Public Works more for the convenience and information of the public, which we shall refer to as "directional signs". It is open to debate whether such signs are included in the definition of "traffic sign" in the *Highway Traffic Act* where "traffic sign" is said to include "all traffic control signals, warning sign-posts, direction posts, signs, lines, marks or other devices for the guidance of persons using highways". Do signs that simply state route numbers fall within this definition? Highway signs that indicate the name of a community, whether it is a sign that marks the entrance to that community or that suggests the appropriate road to take in order to reach that community might be said to be "signs...for the guidance of persons using highways" but these types of signs have not been subject to any specific provisions in either the *Highway Traffic Act* or the "Traffic Signs and Directions Regulations".

In practice, the Provinces does have a program that calls for it to erect and maintain signs announcing community entrances with signs being blue in colour with white lettering, although communities may erect their own signs in place of the standard ones. Directional information is provided by way of route number signs that appear under the provincial logo, usually in the form of a small sign on a single post, although the route numbers may be affixed to other types of signs in appropriate locations. Green signs with white lettering are used to provide directional information either to nearby communities or to leading centres. Unlike many jurisdictions, these directional signs rarely provide distance information. Occasionally signs are used to identify the names of roads or rivers.

Those who appeared before us and addressed this matter were generally of the opinion that this type of signage was inadequate. If this is the view of residents in the Province, we can only assume that the situation is all the more difficult for visitors. Indeed, the subject has been commented upon by the media during the tenure of our deliberations when Mr. Jim MacNeil, editor of the *Eastern Graphic*, related the problems experienced by journalists in finding the Mill River complex from their entry points in the Province. Our own fieldwork throughout the Island yielded mixed results, without any apparent pattern from a geographical standpoint: there were many places where the signage was more than adequate to enable successful travel and there were other spots where guesswork and/or prior knowledge were necessary ingredients in choosing directions. (Appendix C in Volume II details our field work in this regard.) While we recognize there will always be those who will be able to get lost no matter how sufficient the directional signage, just as there are those who will never encounter difficulties regardless of how poor the directional signage, we are of the view there is room for improvements.

One such element brought to our attention many times in our public hearings was the scarcity of directional signs that provide distance information. While we do not suggest that there should be immediate conversion of all directional signs to provide this data, we fail to see why such information cannot be provided on many more directional signs as they undergo replacement or repair work.

In part, our views on directional signage are tempered not only by the dubious sufficiency of the present system but also by the demands inherently placed on directional signage if restrictive measures are continued and/or enlarged with respect to other types of signage. Adequate directional signs are a mandatory prerequisite to fair play if roadside advertising is largely denied to the private sector.

In addition, if standards are being imposed on the general public in terms of the signs they may or may not employ primarily in the name of aesthetics, it is important that government provide an example itself. We have observed some directional signs that leave much to be desired by way of appearance. Lettering is fading, the signs are not mounted well and/or other indicators point to some lack of care in the maintenance of some directional signs. Such flaws, albeit minor, need to be corrected if only to demonstrate to the public that government zeal in preserving roadside appearances is not confined solely to regulating others, to the exclusion of its own domain.

As part of this exercise, a concerted effort should be made to use posts for two or more signs. In saying this, we realize this is already a practice in some locales but perhaps more could be done. We understand, for example, that route signs which shared utility poles in the past, have now been mounted on separate standards because of safety concerns for utility workers who might be injured while servicing these poles. We appreciate this concern but it is premised on the use of wooden or metal signs with a flat surface that is affixed to a rounded pole. Can route signs be otherwise devised? Can route numbers be painted on utility poles with stencils? Or could route numbers be signed by means of a "sleeve" that smoothly encircled a pole, much like a small poster that has been taped, with appropriate modifications for durability?

We would also like to express our view regarding the importance of community signs. In many rural areas, the loss of the local schoolhouse - perhaps soon to be joined by the loss of the post office - has meant a loss of the "flagship" that served to tell the travelling public just where they were. While community signs may have little or nothing to do with community vitality or pride, we do feel they serve some intangible purpose beyond a directional component, if only a heritage recognition.

By the same token there are numerous rural roads, as well as rivers and streams, that should be signed more adequately. In part, this helps to ensure traditional names are not lost or forgotten. More importantly, from the standpoint of providing directional information, these can be vital markers particularly in the rural countryside.

Finally, with respect to directional signs, many of those who appeared before us expressed dissatisfaction with the current signage policy whereby the more distant directions were signed in accordance with a practice of limiting names to only one major centre. A sign that reads simply "Summerside" can be relatively useless for the traveller who seeks Kensington - or O'Leary, Tignish or Alberton. Moreover, smaller towns and villages want some public recognition of their existence beyond a community sign at their borders.

Accordingly, we recommend

- **THAT government review its directional signage in the Province and, in particular, that distance information be provided on directional signs as these are being repaired or replaced; that research be conducted to find a safe and effective way to provide route numbers on utility poles with the results being used to increase route signage, particularly on rural, nonarterial roads; that directional signs indicating distant major centre(s) include more of the towns and villages located on that route; that directional signs, particularly those marking communities, be reviewed for appearances and, where necessary, be repainted or otherwise improved in appearance and/or positioning; and that more rivers, streams and rural roads be signed with small markers.**

Beyond the realm of traffic signs and directional signs, we plunge into a subject of immense complexity, a foretaste of which is suggested by the web of legislative netting found in three separate enactments: the *Municipalities Act*, R.S.P.E.I. 1988, Cap. M-13; the *Highway Advertisements Act*, R.S.P.E.I. 1988, Cap. H-4; and the *Roads Act*, R.S.P.E.I. 1988, Cap. R15.

Under the provisions of Section 31(v) of the *Municipalities Act*, "[t]he council of a town or village set out in Schedule 1 may provide . . . (v) signage control. . ." Schedule 1 of the *Municipalities Act* lists Alberton, Borden, Georgetown, Kensington, Montague, Parkdale and Souris as Towns, while the Villages enumerated there are: Abrams Village, Bedeque, Bunbury, Cardigan, Central Bedeque, Cornwall, Crapaud, East Royalty, Hillsborough Park, Hunter River, Kinkora, Minimegash, Miscouche, Morell, Mt. Stewart, Murray Harbour, Murray River, North Rustico, O'Leary, St. Eleanors, St. Louis, St. Peters Bay, Sherwood, Southport, Tignish, Tyne Valley, Victoria, Wellington, West Royalty and Wilmot. Missing from Schedule 1 are the two largest urban centres - Charlottetown and Summerside - which have separate acts of incorporation that also enable these municipal jurisdictions to regulate signage within their borders.

A second legislative provision that must be taken into consideration with respect to signage is the *Roads Act*. Three definitions used in the *Roads Act* are of interest in this regard: "community", "municipality" and "highway". Section 1(d) defines a "community" as follows: "community" means a community as defined in clause 1(b) of the *Municipalities Act* R.S.P.E.I. 1988, Cap. M-13". Section 1(j) of the *Roads Act* defines "municipality" as meaning "a city, town or community". Accordingly, it is impossible to know the scope of the *Roads Act* without reference to the *Municipalities Act* where Section 1(b) defines a "community" as meaning "an area incorporated as a community under section 8 or 9 and includes the villages and communities set out in Schedule 1". From this, it would appear that where the *Roads Act* makes reference to a "community", it encompasses all towns, villages and community improvement committees, except for the City of Charlottetown and the Town of Summerside, but where it refers to a municipality, it includes Charlottetown, Summerside, and all other towns, villages and community improvement committees. Section 1(g) of the *Roads Act* defines a "highway" in the following way:

> 1. In this Act . . .
>
> (g) "highway" means all the area within the boundary lines of every road or street or right-of-way
>
> (i) outside the limits of any city or town, or
>
> (ii) within the limits of a city or town if designated under section 28 or 29,
>
> which is designed or intended for or used by the general public for the passage of vehicles, and includes any bridge over which any such road, or street or right-of-way is laid; . . . .

(The references to Sections 28 and 29 are in relation to designation of a highway as a controlled access one or to designation in some other category.)

Sections 37, 41, 42 and 43 of the *Roads Act* must also be noted in respect to signage issues. These provide as follows:

> 37. (1) No person shall cause any obstruction or make any encroachment by fencing or otherwise, placing pulpwood, lumber or any other material, upon any of the public roads of this province, or wrongfully open out or close up any drains or ditches or water course upon or leading to, from or across any public road, or place any obstruction upon or in any wise interfere with the public in travelling upon or over any road or winter roads in actual use as such.
>
> (2) The Minister may order the removal of any obstruction or encroachment by fencing or otherwise, or by the placing of pulpwood, lumber or other material on the roads, the opening out or the closing up of any drains, ditch or water course which has been wrongfully opened out or closed up, or the abating of any nuisance in respect to the highways.
>
> (3) No person shall put, place, cast, throw, or leave upon or in view of any road, street, wharf, sidewalk, ditch, gutter, or public place or upon or in view of any portion of the right-of-way of any road or street aforesaid, any bottles, dirt, filth or rubbish of any nature whatsoever, or any material, object or thing which is offensive to the general appearance of the places set forth above, nor cause obstruction, nuisance, or injury to those places.
>
> ....
>
> 41. (1) No person shall, without a written permit from the Minister, erect any building at a distance of less than one hundred feet from the centre line of any highway or road, nor shall any building be erected at a distance of less than fifty feet from those of the next adjoining owner.
>
> (2) No person shall, without a written permit from the Minister, erect any building, structure, sign or billboard, at a distance of less than two hundred feet from the point of intersection of any intersecting roads or highways or at a point less than two hundred feet from the point of intersection of a road or highway with a railroad.

(3) For the purpose of this section the point of intersection of roads or highways is the point at which the centre lines of such roads or highways intersect, and in the case of a road or highway intersecting with a railroad the point of intersection is the point at which the centre line of the road intersects with the centre line of the railroad.

(4) No person shall, without a written permit from the Minister, erect at or near a curve or bend in a road or highway any building, structure, sign or billboard which may obstruct or interfere in any manner with a clear view of traffic on the road or highway or which would result in a reduction of the actual sight of traffic on the said road or highway to less than one thousand feet.

(5) The Minister upon receiving application for a permit may grant or refuse the permit and his decision to grant or refuse the permit is final and conclusive.

(6) This section does not apply to any incorporated city, town, community or to any area in which the regulations of the *Planning Act* R.S.P.E.I. 1988, Cap. P-8 apply. R.S.P.E.I. 1974, Cap. R-15, s. 41; 1983, c.33, s.66.

42. (1) When and so often as it may become necessary in the opinion of the Minister to cut down trees or to remove fences, signs or billboards at the intersection of roads, intersection of road and railway, dangerous curves in the highway or where trees, fences, signs, or billboards are considered by the Minister as dangerous or interfering with the maintenance of the highway, the Minister may authorize any person to enter upon the lands and to cut down the trees and to remove the trees, fences, signs, or billboard, as may be designated by him.

(2) When and so often as it may become necessary in the opinion of the Minister to remove any land in or adjacent to any highway which obstructs the vision of motorists or otherwise, or buildings or other structure at the intersection of roads, intersection of road and railroad, dangerous curves in the highway or where buildings or other structures are considered by the Minister as dangerous or interfering with the maintenance of the highway, the Lieutenant Governor in Council may authorize the removal of the land, buildings or other structures by Order-in-Council.

(3) In the event any buildings or other structures are ordered to be removed by the Lieutenant Governor in Council the provisions of this Act relating to expropriation apply. R.S.P.E.I. 1974, Cap. R-15, s. 42.

43. (1) No person shall place, station, or operate lights near a highway of such kind or intensity or in such a position that the light blinds the vision of a motor vehicle operator or in any way renders a highway unsafe for night travelling.

(2) Where, in the opinion of the Minister, a light is dangerous to travelling safety, the light must be moved or shielded to the satisfaction of the Minister.

(3) If the light is not corrected immediately following written notification from the Minister, the Minister may cause the correction to be made at the expense of the owner. R.S.P.E.I. 1974, Cap. R-15, s. 43.

The *Highway Advertisements Act* provides definitions of both "advertisement" and "highway", definitions so broad that any public notice or announcement and any public right-of-way would seem to be encompassed within its provisions. The legislation allows the Lieutenant-Governor-in-Council to make regulations "prohibiting and regulating (i) the erection, maintenance, pasting, painting or exposing of advertisements, and (ii) the removal of any advertisement and prescribing the removal thereof, in any area of the Province except in the City of Charlottetown, the Town of Summerside, and in any town..." - to quote, in part, from Section 2(a) of the *Highway Advertisements Act*.

We have made extensive reference to these legislative provisions because we were unable to ascertain from a review of these many sections just what jurisdiction the province has retained for itself in signage control. Instances have been brought to our attention where members of the public have erected signs in conformity with municipal bylaws, only to find they have clashed with provincial provisions.

Under the provisions of the *Municipalities Act*, the Province has delegated its powers with respect to "signage control" to its towns and villages. Having done so, can the Province then impose signage control on the villages, as it purports to do under the provisions of the *Highway Advertisements Act*? Section 41 of the *Roads Act* does contain certain restrictions on signage but all incorporated areas are excluded from this provision. Moreover, the definition of a "highway" in that legislation, combined with the lack of definition for a "road", render it difficult to determine when and if it is correct to apply other provisions of the *Roads Act* within the town boundaries. While arguments could be advanced to support the position that Sections 37, 42, or, on occasion, 43 of the *Roads Act* could be used in some circumstances to exert signage controls in towns throughout the Province, the usage of the words "signs" and "billboards" specifically in Section 41 suggest the circumstances in which signage control might be properly exercised in towns under the authority of the *Roads Act* must be considered carefully on an individual case-by-case basis. Even a most generous interpretation of this piece of legislation would give little authority to exert control over signage found on private property in most situations. Moreover, this legislation has been assigned to the Department of Transportation and Public Works so that the Minister of that Department is the Minister whose discretion is required to invoke the provisions of the *Roads Act*, while the enforcement of the *Highway Advertisements Act* rests with the Department of Tourism and Parks. In fairness - both to the public and to any official charged with administration of the signage laws - it is of vital importance that the rules are clear. And one of the most fundamental points on which there must be clarity is the geographical domain in which the rules are to be exercised.

Accordingly, we recommend

- **THAT the Province clarify the area over which it retains jurisdiction for signage control and amend its legislation to reflect a consistent position.**

Under the Highway Advertisements Regulations "no person shall erect, paste, post, place, maintain or display an advertisement on any location within view of a highway unless he has first obtained from the Minister a license authorizing him to do so" but a license is not required in a number of circumstances, as enumerated in Section 2. It provides as follows:

2. A license is not required under section 1 for
   - (a) (revoked by EC335/86)
   - (b) advertisements relating to federal, provincial, municipal or regional school board elections;
   - (c) advertisements relating to special events or exhibitions of a community, patriotic or religious nature;
   - (d) notices respecting hazards to public safety or health;
   - (e) notices or signs authorized to be posted pursuant to any enactment or order of a court;
   - (f) signs indicating municipal boundaries;
   - (g) signs erected pursuant to the highway informational signage system program operated by the Department of Finance.* (EC141/86; 335/86; 484/86)

*(Note: Originally, Order-in-Council No. 484/86 referred to the Department of Finance and Tourism. When departmental realignment took place, the appropriate amendment would have altered this to "Tourism and Parks", not "Finance". The *Highway Advertisements Act* is now officially assigned to the Department of Tourism and Parks.)

It would appear that a license is required under the Highway Advertisements Regulations for certain types of signs which, in our opinion, should be exempt from licensing. Indeed, we are of the view that every encouragement should be given to promote the use of these types of signs. In this category we would include "heritage signs" that provide information about some aspect of history, "family signs", that serve to identify householders, signs that indicate specific pieces of land are being used for field trials, conservation projects or other types of land-oriented demonstrations, and signs that announce some form of recognition, award or merit. It may be prudent to place size restrictions on signs of this type so that a license is required once the size is exceeded but we are of the view that good signage for these purposes should be encouraged in order to enhance the quality of the landscape.

Accordingly, we recommend

- **THAT the Highway Advertisements Regulations be amended to exempt from licensing requirements small signs that identify heritage sites or convey historical information, family signs that identify householders, signs that indicate field trials, conservation projects or other types of land-oriented demonstrations and signs that announce some form of recognition, award or merit; and that both the public and private sectors encourage more usage of quality signage for these purposes.**

Under the provisions of these Highway Advertising Regulations, the Minister may issue a license if a number of conditions are met. Among these are requirements that the advertisement is not located within highway boundaries; that it is within a prescribed size; that it does not constitute a hazard to the safety of highway users; that it is necessary, having regard to the H.I.S.S. program "because the location of the business is such that it would not otherwise be likely to come to the attention of the travelling public"; and that the landowner on which the advertisement is located has agreed to the location of the advertisement. The last of these requirements suggest licenses for signs in this category are meant to refer to "off premise" signs, although this is not clear and need not be the case.

Another provision in these Regulations refers specifically to "premises advertisements" which is defined to mean "an advertisement that directs attention to a business, commodity, service, industry or other activity that is sold, offered or conducted on the lot upon which that advertisement is located, or to which it is affixed but shall not include a facia advertisement placed flat against the front or end walls of a building." [Section 4.1(1)] Section 4.1(2) of the Regulations then states as follows:

> 4.1 (2) In the application of these regulations to a premises advertisement
>
> (a) clause 4(1)(c) shall have effect as if it read as follows:
>
> (c) the advertisement does not exceed 3 m^2 in area (excluding supports) at the boundary of the premises and the highway, or 8 m in height above the main grade of the ground on which it is placed, but the size of a premises advertisement may be increased by 1 m^2 for each linear metre that the advertisement is set back from the boundary of the highway and the premises to a maximum of 14 m^2;
>
> (b) no fee is payable under section 5 for the issue of a license;
>
> (c) the Minister may limit the number of premises advertisements erected on one premises;
>
> (d) a license is valid for the period specified therein. (EC335/86)

It would appear that Section 4.1 of these Regulations was intended to provide a separate category of licenses for free-standing on-premise signs so that there would be no licensing fee for these signs and so that the number of these signs could be limited to one on each premise, with different size requirements than off-premise advertisements. While this may well have been the intent, Section 4.1 of the Regulations does lack clarity. Are the requirements under Section 4.1 in addition to or in lieu of the requirements for a license under Section 4 of the Regulations? Why are the size and height standards different in each section?

Accordingly, we recommend

- **THAT the Highway Advertisements Regulations be reviewed to clarify the relationship between Sections 4 and 4.1 and to identify the rationale for different size and height standards in these provisions and that appropriate amendments to these Regulations be made.**

The Regulations made pursuant to the *Highway Advertisements Act* were amended during the course of our deliberations. Order-in-Council No. EC571/89, published in the *Royal Gazette* of September 23, 1989, defined a "mobile sign" as "a sign that is used for the purposes of advertising that is designed to be moved from one location to another, whether or not the wheels or other means of moving the sign are attached or in working order". The amendment also provided that, as of January 1, 1990, no license was to be issued in respect of a mobile sign. Since this measure took effect, it would appear that a number of these signs have been immobilized by mounting them on a permanent base. The result has left the advertising medium intact but the visual aesthetics of this type of signage, in its most common form, has not improved and, in fact, frequently has deteriorated.

Accordingly, we recommend

- **THAT signs which were of the mobile type and which have now been attached to a permanent base not be licensed in the province and that any signs of this nature now in use be removed through the enforcement process.**

Steps undertaken to control mobile signage represent a most commendable move - one which was frequently requested in the presentations made to us by the public. The measures which have been taken constitute almost a total ban on this particularly ugly form of signage in many parts of the Province. As a minimal standard, however, it does not go far enough: the prohibition must be imposed throughout the entire Province.

Accordingly, we recommend

- **THAT the prohibition with respect to mobile signs be imposed on a province-wide basis.**

One of the exclusions to the new rules governing mobile signs is "advertising relating to federal, provincial, municipal or regional school board elections". The exclusions are provided in section 1(b) of the Highway Advertisements Regulations.

We have considered this matter with some care. Although Section 8 of the *Highway Advertisements Act* requires the removal of these signs within fourteen days of the election being advertised, we find widespread disregard of this law, particularly among aspiring and successful provincial politicians. More than six months after the provincial election of April, 1989, a number of election signs could still be found along the roadsides of the Province. (It is ironic to note that many of these signs have been affixed to utility poles - a practice discontinued with respect to highway signage some years ago for safety reasons!) Failure to remove election signs in a timely manner has not been confined to any one constituency or any one political party. Nor are provincial politicians the sole culprits; the weather-stained faces and slogans of federal candidates continued to dot the Island landscape long after the final tallies were made in the 1988 national election campaign.

We see little or no reason to allow election advertisements special status. Posters bearing the same information can be readily distributed for window display in commercial establishments. Political gatherings that can be said to be special events of a community nature are already given entitlement to the use of mobile signs and can advertise without a license. By allowing a special status for political advertisements, the political sector is seeking to use mobile signs throughout an entire election campaign and not just for a special event. By enabling candidates and parties to escape from the licensing provisions of the legislation, billboard advertising can mar the landscape for weeks. The business sector cannot be asked to forego advertising tools that would otherwise be available to them if those seeking to enter public life are not prepared to do the same. There must be leadership and example demonstrated by those seeking public office.

At the same time, we acknowledge there may be special problems of a legal nature that can arise if the Province endeavours to institute signage control that is unrelated to commercial signs. Further problems may arise if the controls are aimed at election procedures, particularly with respect to federal elections. Our inclination to urge a prohibition on exterior advertisements during elections, aimed at billboards and at utility pole signage is tempered by such considerations.

Accordingly, we recommend

- **THAT the Highway Advertisements Regulations be amended to remove the exemption from licensing now accorded advertisements relating to federal, provincial, municipal or regional school board elections; that licenses for such advertisements be available, without fees, on condition that the applicant(s) be personally responsible for the removal of such signage following the relevant election; and that such provisions be strictly enforced.**

In addition to the penalties prescribed for offences, the *Highway Advertisements Act* allows for the removal of "advertisements" which are contrary to the legislative provisions. Applying the definition of "advertisement", as found in Section 1(a), it would seem that the removal powers are limited and do not include the power to remove any infrastructure used in support of the actual sign itself. Often it is this structure which is equally (or more) visually offensive than the advertisement itself - and, with the sign removed, the aesthetics are never improved and, frequently, deteriorate further. In order to allow the removal of all parts of the signage directly or indirectly associated with the advertising device, the *Highway Advertisements Act* requires amendment.

Accordingly, we recommend

- **THAT the *Highway Advertisments Act* be amended to provide for the removal of not just the "advertisement" (as now provided in Section 4 of the *Act*) but any structural devices or supports used in connection with the advertisement portion of the signage and that, following such amendment, any enforcement of the legislation that requires removal of an advertisement also include removal of the structure(s) or support(s) used in conjunction with the advertisement.**

The removal provisions in this legislation are tied exclusively to the licensing provisions. Nowhere is there authority in the *Highway Advertisements Act* or its Regulations to provide for the removal of signs that have been damaged, abandoned or neglected. Nor is there any indication that licenses are issued on the condition that signs are properly maintained. In the "Mechanics of Sign Control", a detailed examination of sign laws published by the American Planning Association, Carolyn Brown writes:

> An essential aspect of any sign ordinance is the requirement that signs be maintained in a safe and attractive manner. Without this provision, hazardous or unsightly signs

> may remain indefinetely, or until their permits expire. By inserting a maintenance provision into the ordinance, the city can remove the offending sign after a specified number of days or at the discretion of an authorized official. This type of provision can also be used to remove on-premises signs that no longer correlate with the business they advertise.

Removal of unsightly signs that have not been safely and attractively maintained is more than just a matter of either safety or aesthetics (or both). As we discuss elsewhere in this chapter, signs convey many hidden messages about the economic health and vitality of not only the individual business but the entire community. Derelict signage spells foregone pride in appearances, for example. We think it essential that the legislation make suitable provision for the removal of signs that no longer convey the message of safe and attractive maintenance.

Accordingly, we recommend

- **THAT the Highway Advertisements Regulations be amended to provide that all signs are licensed on condition that the signs are not to be abandoned or neglected; that revocation of a license for breach of any conditions can take place, at any time, on notice; that the sign must then be repaired or replaced in order to have the license reinstated and that failure to do so can cause removal of the signage in the same way as if the sign was never properly licensed.**

Another concern we wish to address relates specifically to *real estate signs*. We recognize that this type of signage is particularly important in order to provide directional information for prospective purchasers of property. At the same time, we are convinced that the annual spring blossoming of a profusion of real estate signs suggest much of the entire province is suddenly for sale. In our opinion, too many "For Sale" signs in a small locale suggests something has suddenly gone "wrong" with the neighbourhood and property owners are desperately anxious to move elsewhere! Real estate signs that remain in place after a property has been removed from the listing - often signs that bear the word "SOLD" or that have faded from long exposure to the elements - are roadside advertising for the real estate firm, not directional information for prospective buyers. The widespread practice in rural areas of affixing numerous signs from several competing firm to one or a few posts to indicate listings in the general vicinity needs to be greatly curbed. The real estate industry has failed to make use of sketch maps in its printed materials to locate properties, relying instead on roadside advertising in the countryside.

Accordingly, we recommend

- **THAT the province encourage real estate firms to take a more responsible position in limiting real estate signs and, in particular, to remove these signs promptly once a property has been sold, to replace signs that are faded or otherwise in poor condition, and to use small directional maps in their weekly bulletins as an alternative to the widespread use of directional signage in rural areas.**

There is no mention of the H.I.S.S. Program in the *Highway Traffic Act*, the *Municipalities Act*, the *Highway Advertisements Act*, or the *Roads Act*. The only mention of this program we have found in the legislation is in Section 2(g) of the Regulations made pursuant to the *Highway Advertisements Act* where "signs erected pursuant to the highway informational signage system program operated by the Department of Finance" are excepted from licensing requirements and in Section 4(1)(e) of these Regulations where one of the requirements that must be satisfied in order to obtain a license for an advertisement is to satisfy the Minister "having regard to the highway informational signage system program, that the advertisement is necessary because the location of the business is such that it would not otherwise be likely to come to the attention of the travelling public".

The legislation should provide a basis for the H.I.S.S. program, including rules under which applications may be refused signage or would be denied the number of signs for which they have applied. The purpose of the H.I.S.S. program - to provide directional information, not to advertise a business - should be emphasized. The legislation should clearly set out the goals and objectives of signage control. It should include a preamble that indicates the necessity for signage measures, spelling out that the public interest requires protection for rural and urban landscapes and that aesthetics are a vital component in maintaining a pleasing and positive image, so essential for the advancement of our tourist industry as well as for the enhancement of our surroundings for all residents.

Accordingly, we recommend

- **THAT the *Highway Advertisements Act* be amended to establish within the law that the public interest requires that protection be given to rural and urban landscapes; to give legal status to the Highway Information Sign System program; to show the goals and objectives of the Highway Information Sign System program (including its aim of providing alternative signage for directional information and not roadside advertising); and to include the rules under which applicants may be refused signage or denied the number of H.I.S.S. signs for which application has been made.**

In spite of the lack of any legislative base authorizing the erection and maintenance of roadside advertising for the private sector, we understand that the Highway Information Sign System came into effect in 1974 and is a highly subsidized program designed to provide the travelling public with directional information in a concise and uniform fashion. The general acceptance of the program is evident in the statistics showing a steady increase in the number of H.I.S.S. signs installed each year - from 1208 in 1980 to 2067 in 1987.

The H.I.S.S. program is operated through the joint efforts of two separate departments. According to the annual Report of the Department of Transportation and Public Works for the year ending March 31, 1988, the traffic engineering section of this department "assumed responsibility for erection, maintenance and dismantling of the H.I.S.S. standards, in addition to the manufacture of the signs". The Report, at pp. 71-2, went on to state:

> New installations this year were placed on steel telespar sign posts and anchorage system. This type of installation replaced the previous method of pre-cast concrete bases and 5' x 5' wooden posts and proved more satisfactory and more economical than the previous method.
>
> The work was performed by our five regional sign crews. The crews spend approximately 3 weeks in the spring erecting standards and signs, and also in the fall dismantling standards for winter storage. New signs were also erected by the sign crews, requiring approximately 1 day from each crew weekly for the months of June, July and August.
>
> There were 582 new signs erected on new or existing standards. There were 200 new steel standards erected. The program now has approximately 1,150 standards and 2,200 signs within the province.
>
> Because of the high turnover of applicants for this program, yearly signs no longer required in the system are stripped and reused. This year we stripped 400 of these sign blanks and put them back in stock for relettering for new applicants. This was done under contract at a cost of $7,800.

Elsewhere in the Annual Report for the Department of Transportation and Public Works, it was noted that the sign shop operated by the Department produced the 582 new H.I.S.S. signs as part of its total new production of 4,873 signs. The more recent Annual Report for this department, for the year ending March 31, 1989, indicated little change in the program except for slight increases in the number of new steel standards erected (225), the number of standards involved (1250), the number of signs in the province (2400), and the number of sign blanks stripped for reuse (600). Clearly the program is widely utilized but there is a high turnover rate of applicants.

The Annual Report for the Department of Tourism and Parks, for the year ending March 31, 1988, made reference to its involvement in the H.I.S.S. program in these words, found at p. 10:

> The administration of the Highway Advertisements Act was transferred from the Department of Community and Cultural Affairs to the Department of Tourism and Parks in 1987. Alden Ford assumed his role as Highway Advertisements Coordinator on July 22, 1987. The Department's mandate is to enforce the Act in a fair and legitimate way - by approving and licensing on-premise and off-premise signs as provided for under the Act and Regulations. Staff routinely provide advice to operators, municipalities and sign manufacturers in respect to proper and appropriate advertisements. The Highway Advertisement section is also responsible for the administration of the Highway Information Signage System (uniform signs).

We understand that the H.I.S.S. program enables business operators to apply for signage. Successful applicants may, for a fee, have the name of their business on a sign, together with distance and/or directional information. The sign is of uniform colouring (black background with white lettering for the name; green background and white lettering for the distance and/or directional information). The 1989 rate schedule, published by the Department of Tourism and Parks, indicated there were "seasonal rates" for the five-month period between May 15 and October 15. Full-year sign rates were double the seasonal rate and "all additional signs (5 or more) must be approved by the Provincial Advertisements Committee". The cost of five or more signs was $80/sign for seasonal participants and $160/sign for full-year participants. Fees for two signs and for third and fourth signs were dependent upon the type of establishment and, in some instances, the size of the business. The 1989 Rate Schedule is provided in Table 1:

Table 1

HISS Rates, 1989

	Seasonal Rates (May 15 - October 15)	
Establishment Type	**2 Signs**	**3rd & 4th Signs**
(A) Accommodations:		
1. Hotels, Motels, Lodges, Inns, Cottages, Farm Vacation Homes, Tourist Homes:		
- 1 to 5 Units	$ 36	$18/sign
- 6 to 10 Units	80	40/sign
- 11 and up	140	70/sign
2. Provincial Parks	140	70/sign
3. Campgrounds:		
- Unserviced Campsites under 25 hook-ups*	36	18/sign
- 25 to 50 hook-ups*	60	30/sign
- 51 and over hook ups*	140	70/sign
(B) Attractions	140	70/sign
(C) Goods and Services	140	70/sign
(D) Restaurants		
1. seating capacity up to 50 units	60	30/sign
2. over 51 units seating capacity	140	70/sign
(E) Automotive & Services	140	70/sign
(F) Recreation	140	70/sign
(G) Gift/Craft Shops	60	30/sign

* Refers to two-way, three-way and other multiple hook-ups.

The 1990 Rate Schedule was similiar to the preceding one with some slight variation in fees. One notable difference was that rates were quoted on a "per sign" basis in all categories, one indication of a subtle incentive for applicants to consider their requirements with more care and, perhaps, curtail their need for more than one sign. Another indication of restrictions on the availability of signs for individual applicants is a footnote to the 1990 Rate Schedule that reads "4 signs maximum per establishment" - a limit that is contradicted by the subsequent footnote which advises that "Requests for 5 or more must be approved by the Provincial Advertisements Committee. If approved, the cost will be $80/sign for seasonal participants, $160/sign for full-year participants."

What then is "government policy" with respect to "roadside advertising"? On paper it appears to be somewhat different than it is in effect. The *Highway Advertisements Act* appears on its face to be legislation to ensure a signage licensing scheme. The information provided by H.I.S.S. materials would tend to imply government policy may be to promote roadside advertising, so long as it is done so through uniform signage since there is no declared indication (save the applicant's pocketbook and the notes on the 1990 Rate Schedule) to curb involvement in the H.I.S.S. program.

In point of fact, we recognize that government is attempting to significantly reduce signage, particularly of a commercial nature, in most parts of the Province. Government policy is best read, not in the pages of its legislation nor in most of the printed material of its H.I.S.S. program, but in the landscape around us. The effect may be best appreciated by visitors to the Province, visitors who may compare the uncluttered vistas of Prince Edward Island with the visual pollution of jurisdictions which have not opted to institute appropriate measures of signage control. However, we do not have to leave the Province to make the contrast, for the relatively unsullied appearance of much of the Island is pointedly at odds with areas not under proper signage control.

Again and again in the presentations made before us, government's moves in restricting advertising in the Province were applauded. We echo that view and commend the initiatives that have been taken in this regard.

Our concerns - and these are reflective of the public opinion expressed to us - relate essentially to the fact that the existing measures are inadequate. We now focus our attention on ways we feel would serve to strengthen sign control in the Province, not because we wish to be critical of the steps that have been taken in the past 15 years, but because we wish to see further advances made in this important ingredient in setting quality landscape standards.

Our review of the existing legislation has provided somewhat of a preview to the variety of signs which may be included in any catalogue of signage control. A reflection on the endless types of signage found in modern day society gives some indication of the growing proliferation not just of signs themselves but also of the types of signs. In "The Mechanics of Sign Control", the bylaws of the City of Orlando, Florida, provided a useful illustration, for not only did its sign ordinance contain an extensive definition of a "sign", it continued by including within that definition some twenty-one separate categories. In Orlando, it would seem, there are rules governing banner signs, bench signs, billboard signs, changeable copy signs, construction signs, directory signs, free-standing signs, ground and/or pole signs, illuminated signs, integral signs, marquee signs, nonconforming signs, point-of-sale signs, projecting signs, real estate signs, roof signs, snipe signs, street banner signs, trailer signs, wall signs and window signs. Clearly we live in an informational age and one method of imparting information has been through widespread use of signs of many varieties.

Increasingly, "unnecessary signage" - particularly commercial signs that advertise a business, product or service - has come under fire if for no other reason than the fact that *too many signs obliterate the utility of having any signs. Saturation renders the medium impotent.* But even before this point may have been reached, controls on signage have often been put in place to combat the decline in visual appearances, safety standards and perhaps property values caused by a proliferation of signs.

Traditionally, these measures have reflected concerns for public health and safety. Standards, customarily enacted by municipal governments at the local level, prescribed rules to ensure signs did not obstruct a view - not to enhance the appearance of the landscape but to prevent an obstruction that could be hazardous to motorists or pedestrians. Signs laws that called for size restrictions or banned the use of certain materials or specified design requirements were aimed at ensuring signs remained stable in high winds, heavy snowfalls or other inclement weather conditions. While these objectives continue to be the basis upon which many signage restrictions are formulated, there is a growing trend to extend the public interest to include appearances. In "The Mechanics of Sign Control", to which we made reference earlier, Carolyn Brown stated:

> ...acceptable rationales are expanding. Most ordinances, however, continue to rely, at least in part, on the traditional health, safety and welfare arguments... .
>
> How much weight is placed on aesthetics and property value protection - as compared to health and safety - will depend largely upon the goals and the nature of the community. For example, *communities with a substantial tourist industry, or with great natural beauty, can and do place a greater emphasis on the aesthetic argument than communities lacking these features.* [Emphasis added]

It is not surprising, then, to learn that Ms. Brown found suggestions on which to model sign controls from such prominent tourist destinations as Palm Springs, California; Phoenix, Arizona; and the City of Honolulu in Hawaii. Because the U.S. constitution guarantees property rights and the American courts have traditionally regarded many sign controls as "takings" (expropriation without compensation) which must be justified to be in the public interest if the laws are to remain in force, careful drafting of municipal bylaws in the area of signage control for reasons of aesthetics have endeavoured to ensure that the public interest component is clearly enunciated. Palm Springs, for example, responded to this need to shield their sign ordinance from legal challenges by using a lengthy statement of purpose. Since the contents of this statement contain much that can be readily equated with our situation in the Province of Prince Edward Island, it is worthwhile to consider some excerpts from the Palm Springs sign ordinance which begin as follows:

> **Purpose.** The purpose of this ordinance is to alleviate a growth of sign usage that is detrimental to Palm Springs. Recognizing that Palm Springs is one of the country's foremost desert resorts, this council finds that the improper control of signs causes a particular problem here. Although there is more to this city than its resort resources, *the attraction and servicing of visitors constitute one of our leading economic activities. Any failure to recognize this significant fact would blind us to the realities of our responsibilities* as councilmen. *The visitor's and investor's impression* of Palm Springs *determines the success or failure of our economic future. We must make certain that what is seen is inviting and appreciated by both visitors and investors.*

> Having spent over six months in studying the many ramifications of sign usage, we realize that *there is a myriad of public and private interests to be weighed in the balance.* We have done this. We have carefully listened to everyone who wished to speak. In now culminating our effort, we are of the opinion that *economic and aesthetic factors are inseparable. Each is but part of the same problem. Any attempt to separate them distorts the picture. We recognize and strongly subscribe to the right of businessmen to advertise their businesses. Still, the right to advertise must be kept within reasonable boundaries consistent with the objectives and goals of the community to retain its special character and the economic advantages that rest largely on the quality of appearance.* We realize that reasonable minds do differ as to how the sign problem can best be solved. The responsibility for finding the solutions, however, falls upon this body. [Emphasis added.]

Just as municipal officials in Palm Springs faced the questions of competing interests in the debate over signage control, we, too, have had to consider the issue from many different angles.

Many signs are private property, acquired often at considerable expense to the owner. Once obtained and installed, however, the costs of signage as an advertising tool may be relatively minimal. Unlike other forms of advertising, some signs may use little or no environmental resources beyond the requirements of the sign itself and its supporting apparatus or hardware. On the other hand, restriction on signage that may divert merchandising dollars elsewhere may not only increase business costs but may also result in advertising programs that require an ongoing drain on the environment. Printed materials, for example, as an alternative to signage, not only call for paper and other products but add to litter and increase demands on garbage collection and disposal services.

While these concerns have merited our consideration, we must acknowledge that the principal "commodity" which Prince Edward Island has to offer its travel industry is landscape. Visitors may go elsewhere to find theatres, waterslides, museums and golf courses. Although they may not find Green Gables anywhere but in this Province, there are many other places with numerous period homes tracing their distinction to beloved authors or their fictional creations. This is not to undermine our manmade attractions. It is, however, a realistic recognition that any and all units in our built environment - from the grandest and most pleasing of buildings to the gaudiest and most unsightly of signs - are but a supplement to the natural component. Human additions can enhance or detract, as the case may be, from the variables that nature has provided. Throughout the entire Province our landscape amounts to an uncommon combination of red sandstone, multi-hued rolling hillsides and sweeping vistas wrapped entirely by seascape. While there is signage that can and does add to this natural asset, many signs do not.

Detractions created by signage may relate to the quantity of signs that result in visual pollution or at least a sense of clutter. It may be a factor of size, where one or more signs obscure an otherwise lovely setting. Quality can be a detriment in many respects; neglected or abandoned signs, for example, convey an impression of careless disregard or other negative images. *Perceptions generated by signage go far beyond the* *message which the sign owner intended to convey in purchasing and placing a sign as a device to attract customers to a business premise.*

It was recognition of the "public image" derived from certain types of signs that led the municipal council of Palm Springs to declare rate signs a public nuisance. The sign ordinance, from which we cited an introductory portion earlier, had this to say as a rationale for their action:

> To begin with, rate signs are more difficult to regulate because of the element of false advertising that inevitably creeps in. They invite cut-throat competition. Rate signs constitute *hard-core commercialism*, which is all right in some places. It is *out of place, however, in a desert resort which seeks to relieve its visitors from the steady pressure of the daily grind. Palm Springs must be guarded against the bargain-basement image, the impression of a going-out-of-business-sale operation which stems from the use of such signs.*
>
> Rate signs are less desirable for still other reasons. They serve a different purpose. *They do not locate a business*, thereby guiding customers to the premises. *They do not advertise the products or services available.* They do not tie together the name, goods, or services and location in a way that can build goodwill, high regard, and a favourable reputation. *They do not advance the economic stability, but rather they tend to undermine and reduce it.* Therefore, in sum, we must conclude that *signs that are too large, too many, too out of keeping with surroundings, or too commercial are detrimental to the general welfare of the people of Palm Springs.* Furthermore, the *public safety is jeopardized by so-called signboard alleys and neon jungles because they tend to overattract the attention of motorists from the road hazards. Also, a honkytonk community attracts the more undesirable elements, thereby creating greater police problems. Economic, commercial, and social downgrading, clutter, confusion, and crime give rise to other health and safety problems. These pressures may not be immediately apparent, but, in evaluating a city's future, they each subtly contribute to definite deterioration trends.* For these reasons, the following regulations are deemed by us to be imperative. [Emphasis added.]

Many of the negative images identified in this quotation may be attributed to commercial signage in this Province, particularly where little effort seems to be going into signage control. If our image as a province is to be one of pastoral beauty, steeped in Canadian heritage and glorifying a rural Victorian-era orphan heroine, we cannot allow this perception to be lost through a neon glare.

In spite of valiant efforts that have been made by the Province to restrict "roadside advertising", the proliferation and profusion of commercial signs in parts of the Province are all too apparent. Often we grow immune to their presence in our day-to-day lives. Does a financial institution attract new customers, satisfy old ones or aid in marketing its business by having its name and/or logo on five separate signs all affixed to the frontage of its building? Do customers patronize a store because its name is in neon above its frontage display windows, on one side of its building and repeated yet a third time in a high free-standing neon sign on its front lawn? Does a tourist attraction that includes a restaurant and lounge draw more patrons through the use of three or four exterior, free-standing neon signs in addition to four facia ones? Are flashing lights, ripping through the twilight of a summer evening in Cavendish compatible with the tranquillity and relaxation we try to package and sell in the glossy color imagery that taxpayers finance in our tourism brochures? But visitors - particularly discerning travellers who know, perhaps only instinctively, what good signage control means - are quick to label the "Coney Island" look as "too commercial", a phrase that may not mean there are too many businesses but, rather, that businesses are neither quality or quantity conscious with their signage.

Our commercial sector can operate effectively with less, far less, by way of commercial signage. This fact was brought to our attention most graphically when we viewed several communities in the United States where stringent signage control mechanisms have been put in place. In Freeport, Maine (Where L.L. Bean retails 24 hours per day, 365 days per year) there are no "Golden Arches" at the McDonald's restaurant outlet! There - and in Stowe, Vermont - local sign laws specify sizes and other measures to control signs on premises. The result is very attractive signage and, in the case of McDonald's, the traditional golden arches normally associated with this international fast food franchise were symbolically reduced to painted ones on a small wooden sign of 4 or 5 square feet. This not only served the purpose of identifying the business but also allowed the pleasant building design and careful landscaping to dominate the visual presentation of the premises. While we saw numerous other examples of positive community images conveyed by good signage control, the McDonald's restaurant example demonstrated to us as well as any that stringent signage measures can be a very progressive move when they are imposed on a community that welcomes a thriving trade from visitors.

The attack on signage in Prince Edward Island has been focused on what might be termed the more rural areas of the Province. While this may be in keeping with the promotion of the rural landscape, it raises a number of fundamental questions.

Is it fair to impose a policy on non-urban centres when the chief contributors to visual pollution from excessive and poor quality signage are the businesses conducted in the City of Charlottetown and the Town of Summerside, both of which are marred by "signboard alleys and neon jungles"? Indeed, University Avenue in Charlottetown has been identified as a central reason for naming the capital as the ugliest city in Canada by a *Globe & Mail* correspondent earlier this year. His opinion, we feel, may be extreme; but the elimination of many advertising signs along that roadway would remarkably enhance one of the most travelled entry points to the city. Unfortunately, its example is now being copied by portions of the North River Road, the Mount Edward Road, the St. Peter's Road, and the TransCanada Highway, so that all entrances into the downtown core will soon be equally downgraded unless corrective measures are undertaken quickly.

Restricting advertising signage "off premises" - as is one of the key elements in the present application of the *Highway Advertisements Act* - ensures that urban businesses cannot come into the countryside and impose billboards or other forms of signage some distance from their establishments.

But what about rural-based enterprises? Urban centralization and rural decline have been common features of industrialized society for many years. Prince Edward Island is no stranger to this trend. The heart and soul have been torn out of many of the smaller Island communities over recent decades and it is the commercial sectors that have usually sustained the heaviest blows. Local shops have closed as their trade was lost to the larger centres. Businesses that serviced the agricultural community have disappeared as farm populations dwindled and travel to Charlottetown or Summerside became the norm. Many of these centres have struggled to stay alive and new businesses - many related to tourism but others focused on the changing needs of Islanders' - have opened their doors. An advertising tool that may be available to them (and which may be more effective in an area not blighted by an overabundance of competing signage) is being discouraged or disallowed.

Yet it may be said that rural businesses suffer more handicaps than their city cousins: a smaller customer base in the immediate area, less ease in obtaining supplies or services, perhaps higher costs for basic overhead expenses such as transportation are but a few of these disadvantages. Among the challenges faced by rural businesses to a greater extent than comparable urban ones is the availability of easy directional information. To locate a business premise at 100 Main Street, even if there is no signage but a street marker and a premise number, can usually be seen as an easier task than locating or even providing directions to one that is located in a rural area. This is particularly true where the business is to be found in an unincorporated area and/or off a major highway. (And, at the same time, we must keep in mind that we want our major highways to be as free from access point as possible and without the slower speed zones that develop when we allow rural businesses to find readily identifiable locations of this nature.)

The problem of directional information in Prince Edward Island for rural businesses and their patrons is not rendered any easier by the high density of road networks or the welter of community names that abound in some measure of similarity. Is the location Union Road in Queens County or Union Road in Kings County? Is it in Woodstock, Woodvale, Woodville, Woodbrooke, or Woodville Mills? Fortune, Fortune Bridge, Bay Fortune or Fortune Cove? New Argyle or Argyle Shore? Milton or North Milton? How does one find a premise in Peakes (or is it Peakes Station?) when the postal address is Mount Stewart and the telephone number is on the Cardigan exchange?

Rural businesses are not just catering to neighbours or to tourists. With the high cost of business overhead and a total provincial market of some 130,000 people, businesses selling "big ticket" items - cars, farm machinery, and furniture, for example - may locate in smaller centres and find their customers have addresses from all parts of the Province. In this age of specialization, a business may offer a "unique" product in but one Island location and that premise may be far from the dense corridors of business clusters. Even among businesses that have more localized markets, not all residents in a rural community are people with long-standing roots and newcomers to the area may need directional information.

Earlier we advocated some enhancement to route and directional signage. The roadways of urban centres have traditionally been named, signed and numbered. A corresponding signage to allow rural businesses to use clear-cut directional information for their customers is a necessary prerequisite to overcome this inherent disadvantage, particularly when rural businesses are being restricted in the signage that they are allowed to provide for themselves.

We have made reference to "rural" businesses in these preceding paragraphs for a good reason, even though many of these "rural" businesses are found in the smaller urban centres and incorporated areas of the Province. We have purposely avoided terms like "municipality", "town" or "village" because there is considerable confusion, in our opinion, as to the geographical scope of the Province's involvement in signage control measures at the present time (although we understand that the H.I.S.S. program is available province-wide.)

Signage control is normally a matter of municipal responsibility with either the provincial or regional authority being responsible for measures applicable to unincorporated areas. But Prince Edward Island is a small province in which the tourism industry spans the entire Province and the encouragement of that industry is one of the key reasons for urging more signage restrictions. The City of Charlottetown, which receives a greater share of visitors than any other single destination in the Province, has not been aggressive in curbing the commercial appetite for signage rivalries. Although recent mainstreet/downtown revitalization projects do show hopeful indicators of improvements, the commercial equivalency of "keeping up with the Joneses" is all too evident in many parts of the City. To a lesser degree, similar observations may be made with respect to Summerside and other urbanized cores. For these reasons, we believe there must be certain standards that are imposed to exterior commercial signage throughout the entire Province.

As a minimal, province-wide standard, we can suggest four essential categories requiring action: mobile signs, advertisements for elections (both of which we have already considered), rate signs and flashing signs.

With respect to *rate signs* - outdoor signs that make a specific reference to actual prices in dollars and cents - we find the logic advanced in the Palm Springs ordinance to be very persuasive. There is a growing trend for many businesses to advertise prices through exterior signage. Perhaps we have become more aware of this since we began our deliberations, but we have the perception that the practice has increased considerably in the past year. Often it is the businesses most directly affected by the ebb and flow of visitors who are engaged in this form of signage: accommodations, restaurants and fast food outlets, service stations and other automotive-related services. Posting prices for services or commodities in this fashion does convey a "bargain-basement" image. Collectively, a multitude of these rate signs gives the impression that we cater primarily to tourist who can only afford an Island holiday if they count their pennies with great care. People on vacation want time away from financial pressures and worries; large outdoor signs that constantly play on a monetary theme detract from the relaxation that a holiday is intended to bring. Moreover, the constant emphasis on money in this type of signage soon lends itself to the charge that Island tourism is "too commercial" and it is this form of signage, more than any other, which fosters this negativism.

If there is a general prohibition on exterior rate signage, business owners will continue to have considerable scope with which to advertise their prices if they wish to do so. In addition to other forms of advertisements besides signage, they may use interior signs which may be visible outside. Although this may in some measure contribute to the same negative image that a ban on rate signs outdoors is intended to alleviate, we feel there is a more dominant impact made by the exterior signage, particularly where rate signs are placed away from the facia of the business establishment.

Flashing signs at one time were linked with a glitter and glitz that were considered to be associated with urban prosperity and an indication of an economic boom. More and more negative images are now being associated with these types of signs. It would seem that flashing signs are steadily declining in popularity as business owners recognize that many members of the public equate flashing signs with tacky taste.

In addition, flashing signs are often a hazard to the motoring public. They may divert attention from the road to a far greater degree than other forms of signage and generate confusion for motorists who have come to associate flashing coloured lights with police, fire, or ambulance services, or with other emergency situations. While flashing lights do not appear to be a prominent form of advertising signage in the Province, we feel it would be beneficial to the image being marketed by tourism to force an end to a form of signed advertisement now widely recognized as being outmoded, at best, and hazardous, at worst.

We are also of the view that there are H.I.S.S. signs being used where directional information is unnecessary and that the availability of H.I.S.S. signs should be restricted. In particular, where a business is to be found on the same road as the H.I.S.S. sign, there is often no need for a directional sign that only serves to indicate the business is directly ahead. An intervening crossroad that might result in confusion for motorists as to location might, in some circumstances, be a reason to locate an H.I.S.S. sign for directional clarity. A business located on or near a hill or curve in the road may need an H.I.S.S. sign to better ensure highway safety. But all too many H.I.S.S. signs appear to be little more than driveway markers, sought by business operators to promote their business more than to provide directional information. There is no need, in particular, for many of the H.I.S.S. signs currently being used on Routes 1, 1A, 2, 4 and 6, where the business is clearly in view from afar or where clusters of businesses simply produce a clutter of many H.I.S.S. signs. There is no need for the numerous clusters of H.I.S.S. signs in Cavendish and the application of the program to this area (and others like it) should be curtailed as much as possible.

Alternatives exist for businesses to advertise their locations and many are not now taking advantage of possibilities within their *existing* advertising. The 1989 telephone directory for the Province contains some 237 "Yellow Pages" of advertisements, many of which are block ads that fill large fractions of each page. While there are hundreds and hundreds of advertisements for a multitude of Island businesses, ***only eight (8) businesses***, 75% of which had Charlottetown locations, included within their advertisements small maps of their immediate locale in relation to more significant roadways or other nearby landmarks. A few other advertisers did provide some printed instructions on directions to supplement their address, but the vast majority of Island entrepreneurs using the Yellow Pages were content with an address and telephone number as sufficient directional information. Although many businesses advertise frequently in the media or issue brochures, few use simple roadway sketches as part of their promotional messages. Only in publications aimed at the tourist market is this practice becoming more common; even there, in printed advertisements many businesses continue to leave it to the customer to find their doorway solely on the basis of an address.

In addition, there are numerous directional/informational tools available that have been rarely utilized in this Province. It is common in many jurisdictions to find that all service stations, as well as numerous other business establishments frequently patronized by the travelling public, have a map of the locale conveniently displayed in the corner of a prominent window for the benefit of any passing motorist requiring directions even after business hours. This would be an excellent, yet inexpensive, informational program to initiate throughout the Province, using a conventional highway map printed in a poster format. More urban areas could use a more localized street map to supplement a provincial map.

Areas where there are clusters of businesses - such as Cavendish and North Rustico - could provide local maps that show the locations of all areas businesses. Such maps can be distributed in a number of creative ways that allow them to serve more than one use - as placemats in local eating establishments or as inexpensive souvenir posters for visitors, for example.

Because such alternatives are readily available to the community and because it is easier to locate businesses in commercial sectors, we feel that the H.I.S.S. program should be aimed primarily at "isolated" businesses. We use the term "isolated" in lieu of other possible adjectives for a reason. Had we said the emphasis should be on "unincorporated areas", it would seem to imply that the present level of H.I.S.S. signage in the unincorporated areas near the National Park is acceptable. This is not the case: except where directional signage might be needed for highway safety, many businesses in these areas should rely on on-premise signage and non-signaged means to direct customers to their door. Because of the existing scope of incorporated areas, there are many which are quite rural, where H.I.S.S. signage would be both needed and appropriate. On the other hand, where there are business clusters, the use of symbol signage indicating the availability of goods and services should suffice in place of H.I.S.S. signage for each individual business premise that might apply for inclusion in the program.

Should the Province assume total signage control for the entire Island? We have given this matter some thought and there is reason to commend it. However, there are two difficulties. First, it would require much more by way of resources to implement and enforce the program. Were this is the only consideration, we would be willing to make this recommendation. However, a province-wide standard would be a minimal one.

Signage control should be most stringent in urban areas. It is the City of Charlottetown and the towns of the Province where most of the commerce is carried on where the greatest density of business premises are found and where the most glaring problems exist. With some adjustments, as we have suggested, we feel the existing situation is an acceptable compromise between business needs and the protection of the landscape in rural areas and villages. Elsewhere - in the larger centres - much more is needed to protect and improve the urban landscape.

If much of the jurisdiction of signage control is left in the hands of municipalities, how can the Province ensure its wishes are taken into account? Ultimately, it can evoke the delegation of power and assume the responsibility itself. We are prepared to recommend that the Province do so if municipal cooperation is not forthcoming within a specific timeframe, which we have set, arbitrarily, at 24 months.

In the interim the Province needs to consult with the municipalities to solicit their cooperation in the development of a model signage bylaw that would be the basis for all the larger centres in the Province. Included in this model would be restrictions on off-premise signage comparable with the provincial standard. On-premise signage would be controlled in regards to such matters as quantity of signs, permitted sizes and heights, construction materials and designs. Such a model would establish suitable timetables to allow businesses with existing signs adequate time to amortize their sign costs.

We feel it would be reasonable to limit urban premises to a maximum of two outdoor signs, one on the facia of the building, the other either a facia sign or a free-standing one. A height limitation of perhaps six feet for free-standing signs would seem appropriate to create a pedestrian-sensitive environment. An amortization period should be provided to allow businesses that have made recent investments in singage to recover their costs. One of no less than 3 years and no more than 7 years would seem fitting; this might be scaled in accordance with the original cost of the sign so that more expensive signs no longer in compliance with requirements would be allowed to remain in place longer than less expensive signs.

In addition to developing a model sign bylaw for urban centres, it is essential that business owners receive much more information on the importance of good signage. A start has already been made in this regard with a recent seminar in the province attended by some 200 entrepreneurs but it has been but a start.

Tourist operators in particular are ideally placed to practice signage with flowers during the summer season - a most effective way to combine landscaping of businesses premises with advertising. A competition orchestrated through T.A.P.E.I. and/or Rural Beautification could stimulate an endeavur of this type. The province, too, has a role it can play with more flowered signage for its public facilities.

We have found that in the matter of signage, a picture is very much worth a thousand words. A single photograph of a street with too many signs reveals far more than a drive along the same street in a vehicle. A community that applies good signage laws is a totally different one from the same community with no regard for signage.

To improve the quality of the Island landscape through improved signage, we recommend

- **THAT the Department of Tourism and Parks provide a standard provincial road map in a poster format to each service station operator in the province with the request that the map be displayed in a window location such that it may be examined from the exterior; that the Department encourage local tourist and other commercial organizations to supplement this map program with more local maps or other promotional materials featuring directional information for businesses to operate as an alternative to directional signage for local businesses.**
- **THAT the province promote greater signage control by providing certain additional minimal standards that would include all municipalities (except Charlottetown and Summerside); that municipalities be able to have signage control greater than these minimal standards; that Charlottetown and Summerside be included within these minimal standards if they have not accepted comparable ones within 24 months; and that the province assist municipalities in the development of model signage control bylaws.**
- **THAT in addition to current minimal standards, there be a complete prohibition on exterior rate signs and outdoor flashing signs.**
- **THAT the availability of H.I.S.S. signs as driveway markers be discouraged unless highway safety or locational obscurity render the signage necessary or advisable; and that the H.I.S.S. program be severely curtailed in areas where the density of commercial businesses does not merit the widespread usage of directional/distance information and/or where the number of businesses would result in corridors of H.I.S.S. signs along the roadway.**
- **THAT the province continue to work with commercial organizations in providing business owners with information on good signage and the importance of signage control.**
- **THAT the public and private sectors develop more signage with flowers and other natural vegetation.**
- **THAT the prohibition against placing signs on highway shoulders (particularly of the makeshift "New Potatoes 4-Sale" type) be rigidly enforced.**

Chapter 28

FIXED LINK

One of our terms of reference called for us to inquire into and report on "land use and quality of landscape issues in relation to the proposed 'fixed link' crossing".

As those who have followed proceedings in this matter are well aware, this mandate relates to the proposal for a fixed crossing on Northumberland Strait that came under discussion in 1985 with private sector proposals to the Government of Canada. The chronology that unfolded subsequently included a series of "baseline studies to document natural and socio-economic conditions in [the] general area", commissioned by Public Works Canada in early 1987; a draft Generic Initial Environmental Evaluation (GIEE) prepared for Public Works Canada in October 1987 and finalized in February 1988, after public information meetings; a provincial plebiscite held in early 1988; and a proposal call by Public Works Canada for developers that resulted in three acceptable bridge proposals in the autumn of 1988.

During this interval, the Province of Prince Edward Island was involved in the process in a manner that was to be later outlined in the "Province of Prince Edward Island Submission [to the] Environmental Assessment Review Panel: Northumberland Strait Crossing Project, March 27, 1990" in these terms:

> After the Federal Government had approved the project "in principle", the Province set out ten (10) conditions whereby it would concur that the project proceed to the next phase - a call for non-priced proposals. These ten conditions were outlined in correspondence dated November 6, 1987, from the Premier to the Federal Minister of Public Works.
>
> 1. Highways - compensation for the impact of increased traffic on the Province's highway system.
> 2. Wood Islands - A commitment that the Wood Islands-Caribou ferry will be maintained as an alternate system.
> 3. Submerged Lands - An agreement to transfer submerged lands to the control of the Federal Government for the purposes of the fixed crossing.
> 4. Tolls - Assurance from the Federal Government that tolls for the fixed crossing will be fair and reasonable.
> 5. Displaced Workers - A program to assist displaced ferry workers.
> 6. Economic Development (Borden) - The Federal Government must take steps to offset negative employment and income effects in Borden and area.
> 7. Atlantic Content - The project will maximize significant economic benefits to the region.

8. Environmental Impact - The project will meet strict environmental criteria under the E.A.R.P. process. The Premier stated that the Federal Government would be responsible for the environmental implications of the project and that the project "will proceed only when all significant environmental issues have been satisfactorily resolved."
9. Fisheries - In consultation with fishermen, the Federal Government must establish a mechanism to compensate fishermen whose livelihood is adversely affected by activities related to the construction of the crossing.
10. Utilities - The crossing will include a utility corridor available to the Province for the cost of the installation of transmission facilities.

PLEBISCITE

Immediately following joint concurrence that these conditions would form the basis of a Federal/Provincial Agreement, Premier Ghiz announced publicly that a plebiscite on the question of the fixed crossing would be held on January 18 to provide Islanders with "an opportunity for a wide expression of opinion." On behalf of the Province, the Institute of Island Studies was engaged to conduct a round of public meetings in the weeks leading up to the plebiscite. The purpose of these meetings was to stimulate debate and to ensure that Islanders were fully informed about the issues surrounding the project. On January 18, 1988, 59.4% voted in favour of the fixed crossing, 39.6% against.

On January 20, 1988, the Premier wrote to the Federal Minister of Public Works indicating that, on the basis of the outcome of the plebiscite, the Province was prepared to proceed further with the project; he noted, however, that a great many Islanders were concerned that the full environmental impact of the project had not been adequately determined. Shortly after this correspondence, the Province retained Dr. Ian MacQuarrie and Dr. Ian McLaren to advise it on the environmental aspects of the project.

PROPOSALS

On March 15, 1988, the Federal Government issued a formal call for proposals from the private sector to build and operate a fixed crossing. The deadline for the submission was June 15.

Between March 15 and June 15, the Federal Government established a process to evaluate the "non-priced" proposals expected to be submitted. Evaluation teams, involving several federal agencies and private consultants, were established to assess the proposals from the following perspectives:

a) Environmental;
b) Management Approach;
c) Industrial Benefits;
d) Technical;
e) Financial.

In order to proceed to the pricing stage, approval was required by all five (5) evaluation teams.

> With the exception of the Financial Committee, mandated to examine the financial aspects of the various proposals, the Province participated fully in the evaluation of the six (6) bridge and one (1) tunnel proposals that were received. The Province was satisfied that the evaluation was thorough and that the three (3) proposals that emerged from this process were equally competent against the criteria applied. In a report to the Province, Drs. MacQuarrie and McLaren confirmed their satisfaction with the evaluation process and their concurrence with the outcome.
>
> In September of 1988, the Federal Minister of Public Works announced that, as a result of the evaluation process, three bridge proposals had been approved and that the project would advance to the pricing stage. *At that point, the Province assumed that the project would proceed to bid* and that, in accordance with the E.A.R.P. process, the successful developer would be required to undertake a Specific Environmental Evaluation based on a particular design and construction plan. *However, this sequence of events was altered early in 1989* when the Federal Government announced that the project was being referred to an Environmental Assessment Panel. For the past year, the process has been in the hands of this Panel. [Emphasis added.]

Our terms of reference, calling for us to inquire into and report on "land use and quality of landscape issues in relation to the proposed 'fixed link' crossing", were assigned to us at a time when it appeared that the project would be advancing to a more definitive stage during the course of our inquiry. Therefore, we had initially expected we would have a number of hitherto unanswered questions if not answered, at least in a more certain mould, during our tenure.

Such was not the case, for on April 28, 1989, the federal Minister of the Environment appointed a six-member Environmental Assessment Panel to conduct a public review of the proposal for a fixed crossing. The Panel's terms of reference, issued by the Minister of the Environment for Canada, called for the Panel to examine and report on the environmental and socio-economic effects of constructing the fixed crossing.

On May 4, 1989, the federal Environmental Assessment Panel made available for public review the documentation it received from Public Works Canada. Accordingly, we were able to review the studies prepared for Public Works Canada in connection with this project, as were the members of the general public.

The Environmental Assessment Panel held a number of public hearings in the month of June, 1989. These meetings were designed to provide the public with an opportunity to comment on the sufficiency of the information given to the panel by Public Works Canada. The hearings, held in three locations in the province, were attended by a member of our staff as an observer. (We did not have anyone from our Commission observe the public hearings held outside the province by the Environmental Assessment Panel.) A compendium of the submissions received for these Environmental Assessment Panel hearings was prepared and we were able to review this documentation.

It was apparent to us from this process that groups and individuals who were in favour of the fixed link project were not anxious to find fault with any of the studies that had been done, while those who opposed the project were prepared to argue there were deficiencies in these studies. Equally apparent, however, was the lack of professional, critical examination of these studies, a factor undoubtedly derived from the fact that intervenor funding was not available to enable the retention of independent experts to evaluate the data prepared at the expense of those clearly in favour of the proposal.

Following this series of public hearings the Environmental Assessment Panel, in August of 1989, called for additional information in respect to a number of subjects before moving on to the next stage of its proceedings. The responses to the questions posed by the Panel resulted in supplementary documentation which was compiled by the end of the calendar year. The Environmental Assessment Panel then held public hearings on the proposal to build the fixed link; these hearings concluded on March 30, 1990. The decision of the Environment Assessment Panel, expected in June 1990, was released in mid-August of 1990. The Panel recommended that the project not proceed.

What does our mandate with respect to this term of reference involve? Is it simply an identification of the "land use and quality of landscape issues"? If so, we submit that this catalogue has already been compiled through the numerous consultants' studies and public presentations on the subject. Or was our mandate one of identifying the *effects* of a fixed link on land use and the quality of the landscape?

In view of the developments that took place after this portion of our mandate was formulated, we are of the opinion that any further substantive investigation of land use and quality of landscape issues in relation to the proposed 'fixed link' crossing is premature and that the "certainty", if "certainty" is to be ascertained in this matter, can be derived only if a number of variables are more definitely secured through the identification of a specific and more detailed development proposal.

What, for example, are the dimensions of the construction activity that will take place in the Province of Prince Edward Island? To what extent are infrastructure components associated with the construction phase likely to be contained exclusively within the Borden area? Much of the existing documentation available now contains a mixture of "fact" and "assumption" and it is not always easy to determine the line between these.

A further factor is inherent in our limited consideration of this portion of our mandate - that is, the relationship between our recommendations as contained in this report and the subject matter of the "fixed link" portion of our mandate. We have examined the various aspects of land use, land ownership and the landscape elsewhere in this report from what might be described as a "status quo" position. That is, we have premised our conclusions and our arguments in the absence of a fixed link. Should one be built, we feel that the changes we have called for become even more compelling; in particular, *the need for more land use planning on a province-wide basis, for more government commitment to the goals of land management and preservation of the landscape, and for more public education on the merits of planning are mandatory in the face of a mega-project that will forever alter the future of the province.*

Land use and the quality of the landscape issues in relation to the proposed fixed link crossing will be affected by many of the recommendations contained elsewhere in this report. To examine these issues in any context relating to effects is a futuristic exercise, rendered all the more uncertain in the absence of an accepted proposal. To do so on the assumption that other variables remain constant - that present legislation and policies remain intact - is to assume that our recommendations for change will not be implemented. On the other hand, to do so on the assumption that all of our recommendations will be enacted in their totality may be flattering to us as a Commission but is, undoubtedly, an unrealistic outlook. Consequently, in order to fulfill this section of our mandate to our satisfaction, if our mandate is to go beyond the identification of issues, we would need to assume the challenge of the futuristic exercise the fixed link entails and co-mingle that with a preconceived stand on what elements of our recommendations elsewhere in this report prove to be acceptable!

It is a challenge we find too daunting to accept!

Nevertheless, there are aspects of the existing documentation on the fixed link project on which we do wish to make some commentary. We felt that as a provincial Royal Commission called upon to investigate and report on issues associated with this project, we could not assume an active role in the public hearing process, either at the stage of commentary on the sufficiency of the information or later. But there are elements in the documentation that we feel must be earmarked for attention by the province, in the event this project proceeds.

The first point we wish to emphasize is that the construction of a fixed link would mean a change in transportation and that any change in transportation results in changes in land use and affects patterns of settlement, land usages and behavioural activities. Examples of this abound. Improvements to highways have produced "suburbia". The completion of the interstate highway network in the United States has resulted in a post-interstate era, one where major economic activities and new settlements have developed in rural areas. The decline in railway transportation has transformed the pattern of supplementary services in the hospitality industry: downtown hotels and restaurants are no longer aimed at railway passengers but at airplane and automobile travellers. Without question, a fixed link will affect land use patterns. The key is to plan for such changes to take advantage of positive changes and mitigate negative ones. What will be the changes without planning?

The fixed link documentary studies have concentrated on the "off shore" effects of the project. What work that has been done in terms of "on shore" effects have been presented from the perspective of the federal jurisdiction. For example, the "Impact of the Prince Edward Island Fixed Crossing on Provincial Highway Systems", a report prepared by Geoplan Consultants Inc. in October, 1988, stated, at page 41: "The determination of these changes in traffic volumes provided the basis for further analysis with respect to *highway capacity implications attributable to a fixed crossing.*" From a federal perspective, that interest alone suffices. However, from the standpoint of the province, highway capacity must be assessed not only in respect to the "implications attributable to a fixed crossing" but also a multiplicty of other variables that will have implications for highway capacity over the next decade, including the loss of railway service, the closure of CFB Summerside, the establishment of a potato processing plant near Borden and the establishment or enlargement of potato processing capabilities elsewhere, growth and changes in traffic patterns within the province from the tourism sector (whether stemming from the fixed link or other factors) and so forth.

What "on shore" documentary studies that have been done begin with a set of assumptions and data that have been used to build towards a conclusion. If these assumptions are wrong or if the data is inaccurate, then every observation that flows from that beginning is flawed; the completed edifice is reflective of the sandy soil on which the foundation was built. This difficulty, moreover, is compounded, where one study uncritically accepts the assumptions, data and conclusions of an earlier one, as is the case in some of the fixed link studies.

One example of this will demonstrate the difficulties. The extent to which a fixed link will increase traffic is obviously a critical issue but one which cannot be forecast with any certainty. Rather than utilize a series of ranges and calculate effects within each range (an approach used, for example, by Abt Associates Inc. of Cambridge, Massachusetts in their 1976 report on the "Impacts of Tourism on Prince Edward Island", a study unrelated to the "fixed link"), one statistic alone was chosen throughout most of the fixed link studies. It would appear this originated with the "Economic Feasibility Assessment for the Northumberland Strait Crossing" prepared by Fiander-Good Associates Ltd. in July, 1987. In its draft final report for Public Works Canada, at p. 4.3, it stated:

> Induced traffic can be defined as that volume of vehicle trips which would not have made the trip if the new facility were not provided. In other words, provision of some form of fixed crossing can be expected to create additional traffic, over and above the existing base, because of increased convenience and reduced travel time. Traffic might also be induced from improvements to land accessibility and increased economic activity tributory to the new facility, although it is unlikely a significant volume of traffic will result from such economic activity.
>
> There is no comparable situation in the Atlantic Region which would permit a convenient and accurate estimate of induced traffic volume potential resulting from a fixed link between New Brunswick and Prince Edward Island. *This induced or generated traffic has generally ranged anywhere from 10 to 50 percent of existing volumes in highway oriented projects completed in the past. Considering existing travel patterns, trip purposes and savings in travel time, it appears a bridge could result in a 25 percent increase in existing traffic, while a rail tunnel would be somewhat lower.* For the rail tunnel option, a 15 percent induced traffic value was selected for this project.
>
> *The induced traffic is assumed to occur in the first year of the fixed link (1993).* The induced traffic factors have been applied to the base traffic levels for that year, while subsequent years are inflated by the annual growth rates for auto and truck related traffic. [Emphasis added.]

The "Preliminary Social Impact Assessment Northumberland Strait Fixed Crossing" by The DPA Group Inc., dated August 1987, accepted this without question and, at p. 79, stated:

> Traffic forecasts for the base case and the fixed crossing options were prepared for Public Works Canada as part of the companion study by Fiander-Good Associates on the economic impacts of a fixed crossing. . . . The forecasts are based on annual growth rates of 2.5 percent for auto traffic and 2.0 percent for truck traffic. It is assumed that the rail traffic has been shifted to tractor trailers. A tunnel crossing is

> forecast to induce a 15 percent increase in traffic during the first year of operation. *Due to the shorter travel times for a bridge crossing, the induced traffic is projected at a 25 percent increase during the first year of operation for that option.* [Emphasis added.]

This data was then used by The DPA Group Inc. to forecast tourism increases, as this passage at pp. 100-101 illustrates:

> A bridge or a road tunnel would generate a larger increase in tourist traffic than a rail tunnel because of the greater savings in travel time. Since our concern is to assess the extent of the potential impacts of a fixed crossing on tourism, the impacts of the bridge and road tunnel will be determined because they would be larger. These will then be used to estimate the impacts of a rail tunnel crossing.
>
> The traffic projections prepared as part of the *Economic Feasibility Assessment* companion study assume a steady growth pattern with a one-time increase induced by the fixed crossing. Thus the impact of a fixed crossing can be estimated by comparing forecast traffic volumes before and after completion of the crossing option. *Using these projections as a base, we forecast 125,000 additional tourists visiting Prince Edward Island if a bridge or road tunnel were constructed and an additional 75,000 tourists if a rail tunnel were constructed.* [Emphasis added.]

Using this forecast, the study then made predictions on the demand for accommodations and other economic impacts of increased visitation.

A subsequent report, "Economic Development Opportunities Borden - Tormentine Areas" by Overseas Canadian Project Management and Planning Inc. in August of 1988, accepted the findings on the induced traffic increase, stating at p. 34:

> A preliminary look at the impact of the fixed crossing on the highway network in the study area was made by Fiander-Good Associates Ltd., and DPA Group Inc., in reports prepared for Public Works Canada in 1987. Current traffic volumes are not expected to increase significantly when the railway service is abandoned, because most freight movements have shifted already from train to truck. However, *road traffic volumes could be 25% higher because of the fixed crossing.* [Emphasis added.]

Still later, the "Impact of the Prince Edward Island Fixed Crossing on Provincial Highway Systems", prepared by Geoplan Consultants Inc. and dated October, 1988, utilized this 25% increase with a proviso that the actual increase might be as high as 45%. Such findings were contained in these passages at pp. 10-11, 18:

> 4.1 *Normal Growth Rates*
>
> With consideration to the 35-year forecast required, a detailed assessment of historic traffic (permanent count stations, simple growth rates, compound growth rates, linear regressions), previous assessments and long term economic factors, Geoplan believes that an annual growth rate over the study period of 2.5 percent is appropriate for both passenger and commercial traffic. On particular highway segments, cases for slightly higher or slightly lower rates may be made. In the interests of not unduly complicating the analysis, a system wide growth rate was used.

> ### 4.2 *Traffic Generation*
>
> The issue of how much traffic will be induced by the construction of a fixed crossing is complicated by the lack of a similar, historically relevant, project with which to make comparisons. In order to assist in this analysis, Geoplan has chosen to assess potential generation by segmenting the total vehicular traffic into automobile and truck components.
>
> #### 4.2.1 *Passenger Traffic*
>
> Traffic engineering studies have indicated that major transportation improvements typically induce 10-50 percent more traffic. The lower ranges are normally experienced in rural situations. A previous report entitled "Economic Feasibility Assessment for the Northumberland Strait Crossing" concluded that a 25 percent rate for generated traffic could be assumed. *In the absence of projects comparable to the Prince Edward Island fixed crossing, the 25 percent rate might be considered a reasonable estimate of induced passenger activity.*
>
> In addition to the *somewhat intuitive estimate of inducements* discussed above, a more sophisticated means of evaluating traffic growth was used as part of this study, based on a gravity type model.
>
> ....
>
> #### 4.2.3 *Induced Traffic*
>
> As noted in Sections 4.2.1 and 4.2.2 above, it is estimated that *passenger traffic as a result of a fixed crossing will be induced by a factor of 25 to 45 percent while commercial traffic will experience a 5 to 10 percent increase.* As a consequence, two generated traffic scenarios will be formulated for further analysis: a base case of 25 percent passenger and 5 percent commercial, and a high end outlook of 45 percent passenger and 10 percent commercial. [Emphasis added.]

As a result of the Environmental Assessment Panel hearings, more information was sought about various impacts on terrestrial habitat. Question B-1 was phrased as follows:

> Please examine worst plausible scenarios for impacts due to increased vehicle traffic and associated land development pressure that might result from a fixed crossing. This investigation should include effects of these factors on beaches, sand dunes, offshore islands, rivers, ponds, salt marshes, wetlands and bogs as well as the effects of these factors on air quality with respect to human health. Give likelihoods for these scenarios.

The response, in relation to the actual volume of traffic increase, was found at pages B-3 and B-4:

> The percentage increase per year for vehicular traffic was estimated to be 3% to the year 1994. *The anticipated 25% increase in traffic with the fixed crossing will be realized over one year* in 1995. By 1995 the number of vehicles anticipated to be travelling via the fixed link is assumed to be 1,125,565. This number includes both passenger related vehicles (84%) and commercial vehicles (16%). By the year 2000 the total number of vehicles anticipated travelling on the link will be 1,343,983.

> In terms of the number of tourists travelling to the Island, the 1995 numbers are anticipated to be 906,000. Assuming an annual increase of 3% thereafter, 1,050,302 tourists are projected to be visiting the Island by the year 2000. Currently, tourists visit mainly Cavendish, Charlottetown, the South Shore and Kensington, and overnight in Charlottetown, Cavendish and Summerside. It has been assumed that these patterns will not change with a fixed crossing. No major development plans have been identified at this time for Prince Edward Island which would lead to a change in visitation patterns. [Emphasis added.]

The Environmental Assessment Panel had this documentation reviewed by independent experts, including M. J. Dadswell, Associate Professor of Biology at Acadia University, who made this observation (at pp. 12-13 in his report contained in the "Compendium of Comments on Supplementary Information to the Bridge Concept Assessment Document"):

> In the BCA Supplement - page B-3 it states: "The anticipated 25% increase in traffic will be realized over one year in 1995." OK so far but when one looks at Support Document B, page 3-5 (section 3.2.3 Traffic projections) the anticipated immediate increase of 25% is calculated *only* for cars *not* commercial vehicles.
>
> In BCA the total number of vehicles expected in 1995 = 1,125,565. In Support Document B it states 856,718 will be cars. Therefore the remaining 168,847 vehicles are trucks, which is only a 3% rise over 1994 (the last year of the ferry). Now if tourists and cars go up 25% and trucks only 3% how is all the toilet paper, gas and food these extra tourists will consume going to get on the island[?] There will be *a lot* more trucks on the bridge. [Emphasis added.]
>
> Total traffic in 1995 is more likely to be 204,911 trucks (*assuming a 25% increase*) and therefore 1,161,629 total vehicles (1,387,045 by 2000). [Emphasis added.]

These excerpts serve to illustrate how one study has piggy-backed on another. While we could elaborate on other examples, we shall move on to illustrate what a slippery slope this approach can become. Quoted earlier was the response to Question B-1, which predicted that "by 1995 the number of vehicles anticipated to be travelling via the fixed link is assumed to be 1,125,565. This number includes both passenger-related vehicles (84%) and commercial vehicles (16%)". This passage suggests the number of commercial vehicles to use the fixed link in 1995 would be 16% of 1,125,565 or 180,090 vehicles. However, when we examined the transportation statistics for the Borden-Cape Tormentine ferry service for 1989 (as contained in Table 2 of the Province's Sixteenth Annual Statistical Review, dated March, 1990), we found there had been 32,314 trailers and campers, 88,149 trucks, 128,141 tractor trailers, 4,887 buses and 701 rail cars. The total number of trucks and tractor trailers alone amounted to 216,290 vehicles which is 36,200 more than the total commercial vehicles projected in the Supplementary Information to use the fixed link in 1995!

One of the most obvious consequences with respect to land use and landscape issues is in relation to roads. Earlier we examined the subject of roads from what we might term a "status quo" perspective. If a fixed link is undertaken, then the subject assumes an additional component, particulary in relation to certain traffic arteries. The impact of the "fixed link" project on roads was the central theme of the report prepared by Geoplan Consultants Inc. for Public Works Canada in October of 1988. Traffic projections were also cited by Fiander-Good Associates Ltd. in their "Economic Feasibility Assessment for the Northumberland Strait Crossing", prepared for Public Works Canada in July of 1987. A review of these documents does not reassure us that the conclusions reached in these reports should be accepted by the province without its own traffic study. To explain our dissatisfaction, we would like to point out some of the difficulties we felt were apparent.

Consider, for example, the following passage from the Fiander-Good report at p. 4.2:

> The existing historical ferry statistics at Borden - Cape Tormentine and Wood Islands - Caribou provide an excellent means of establishing the existing traffic base across the Northumberland Strait in terms of passengers and vehicle types. Crossing volumes for each ferry service were obtained from the Water Transportation Assistance Directorate (WTAD), Transport Canada, for the years 1976 to 1986, including rail traffic. This provided a good indication of past growth in the ferry service volumes.
>
> *In 1986 1,661,900 passengers utilized the Borden - Cape Tormentine crossing. There were 582,800 auto related vehicles and 117,400 trucks. At the Wood Islands - Caribou service, which operates during the ice-free season, the 1986 volumes included 530,100 passengers, 178,300 autos and 19,800 trucks.* The Borden - Cape Tormentine service handles over three times the volume of the Wood Islands - Caribou service.
>
> In addition to historic ferry statistics, two vehicular roadside origin - destination surveys provided a good description of traffic stream characteristics. *In 1979, a roadside survey of all vehicle types was collected in the four Atlantic Provinces.* Data on vehicle types, origins, destinations, trip purposes and vehicle occupancy rates were collected. *In 1984 a truck origin - destination survey was also completed throughout the Atlantic Provinces. This database provided useful information on truck types, origins, destinations, payloads and commodities carried.*
>
> These two databases contain useful information on characteristics of the traffic utilizing the two ferry services operating between Prince Edward Island and New Brunswick.
>
> WTAD also provided historical data relating to rail traffic across the Northumberland Strait at Borden - Cape Tormentine. These data reveal the dramatic decline in total tonnes moving across the Strait in rail cars. In 1979, there were 391,870 tonnes moved in rail cars, while in 1985, this had declined to 213,140 tonnes, a 45.6 percent decline. Indications are that rail traffic will continue to decline and for the purposes of this project, is assumed to disappear in 1993. This assumption was based on discussions with various government departments and recent intermodal operations CN Rail have introduced. [Emphasis added.]

Let us consider the data presented in this. To do so, we considered the "Fifteenth Annual Statistical Review, 1988" for the Province of Prince Edward Island (March, 1989). Table 59, at p. 62, provided a number of transportation statistics for Prince Edward Island, and for the 1986 years, these were as follows:

Borden, P.E.I. - Cape Tormentine, N.B.
Ferry Service

Autos	513,665
Trailers and Campers	30,400
Trucks	81,474
Tractor Trailers	92,485
Buses	4,007
Total Vehicles	722,031
Rail Cars	5,681
Passengers	1,661,873

Wood Islands, P.E.I. - Caribou, N.S.
Ferry Service

Passengers	530,095
Autos	156,350
Trucks, Recreation Vehicles & Buses	50,539

This data indicates that in 1986, the Borden - Cape Tormentine ferry service carried 722,031 vehicles (excluding rail cars), while the Wood Islands - Caribou ferry service carried 206,889 vehicles. The Fiander-Good report suggests these figures would be 700,200 vehicles in the case of the Borden ferries and 198,100 vehicles in the case of the Wood Islands ferries. It seems to us that a simple statistic such as this in the database should not reflect such discrepancies. The point is of particular importance where the data is used as a baseline for a projection that is subjected to annual increments over an extended timespan.

Moreover, we question the utility of using as a database a roadside survey conducted nearly a decade earlier. Whether this information was subjected to any sampling techniques in 1987 to ascertain its currency is not apparent from the report itself. But the statistical data is suggestive of shifts that could have a major impact on the relevancy of stale information. For example, the Borden-Cape Tormentine ferry service data (shown in Table 62 of the Sixteenth Annual Statistical Review for the Province of Prince Edward Island, 1989, and in Table 66 of the Prince Edward Island Historical Statistical Review, dated 1985) indicates that, in 1987, the year when Fiander-Good was preparing its study, 87,292 trucks and 104,979 tractor trailers were using the ferry service, whereas in 1979 - the year of the roadside survey - trucks were much more prevalent in relation to tractor trailers, with 105,230 trucks and 66,608 tractor trailers counted as ferry service users. Even reliance on a more current study (i984) is questionable when research shows 10,609 rail cars used the ferry service in that year, as compared with 2,968 rail cars in 1987. It may well be that these databases still portrayed an accurate indication of traffic *patterns*, but we are of the view such major shifts in commercial vehicle usages do not permit the untested assumption that more traditional traffic patterns can be replicated and then used for long-term forecasting.

The Report on the "Impact of the Prince Edward Island Fixed Crossing on Provincial Highway Systems" prepared by Geoplan Consultants Inc. acknowledged, at p. 13, that "[t]he traffic data used in the calibration process was obtained from the 1979 Origin Destination Survey", so it,too, relied on stale data. Much of this report was derived from a "gravity type model" that evaluated traffic growth using a complex mathematical formula. This called for the use of population statistics and, at page 14, the consultant explained the limitations of this approach:

> As is the case with any such analysis, a number of factors are ignored that may affect the results achieved. ***The gravity model approach assumes that the principal determinants of travel are respective populations*** and travel impedance, and as a consequence, is susceptible to error as travel is contingent upon many other variables. The results produced in this particular incidence, however, are in keeping with the range of generation activity identified by past studies, and as a consequence, will be used to represent the upper limit of induced passenger traffic that will be stimulated by a fixed crossing. [Emphasis added.]

In the application of the formula, the population of locations is a key variable and to supply this variable seven urban centres in Nova Scotia and New Brunswick were selected, together with Charlottetown and Summerside. Table 4.1 in the Geoplan Report indicated a population of 25,800 was used for Charlottetown and one of 5,800 was used for Summerside. We do not purport to understand the mathematics involved in this process but we felt major variations in these basic numbers would alter the effects to an appreciable degree. In consequence, we were somewhat surprised with the population figures used for the two Island centres. Attributing a population of 25,800 to Charlottetown indicates that some of the adjacent municipalities were included beyond the City itself: the population data we have used elsewhere in this Report indicates the inclusion of Parkdale, Sherwood, West Royalty, East Royalty, Southport, Bunbury, Hillsborough Park and Cornwall would result in a total population of 32,984. On the other hand, the gravity model calibration data in Geoplan's Table 4.1 used a base figure of 5,800 as the population of Summerside. This is much lower that the statistic being used by the province (8,020) and the inclusion of St. Eleanors, Sherbrooke and Wilmot would produce a population of 14,038 for this segment of the formula.

Coupled with these inconsistencies, there is the central fact that the population figures are not reflective of the whole province all of which utilizes the Borden entry/exit for certain Maritime destinations. Moreover, a model based on solely urban centres may be appropriate in terms of highway traffic patterns in many jurisdictions. We question this approach in the case of Prince Edward Island where the agricultural base of the economy, combined with the location of processing plants associated with the sector, are located primarily outside the urban centres identified in the study.

Considering the importance of this subject to the province, we are of the view that the province must critically examine this study to reach its own conclusions on highway impacts derived from transportation changes across Northumberland Strait.

Neither the Fiander-Good study or the Geoplan report addressed the subject of roads in relation to the construction phase of the fixed link. If work proceeds largely from Prince Edward Island, the amount of labour and materials required for the project will mean both increased traffic and changes in traffic patterns in the local area during the construction phase. Construction of on-shore servicing facilities may call for the building of new roads, from the standpoint of the province providing roads for the private sector.

The completion of the fixed link means new traffic patterns. While the expert reports focused on the magnitude of traffic increases, little attention was devoted to one obvious change in pattern: the pulses of heavy traffic that are a hallmark of the Trans Canada Highway between Summerside and Charlottetown and that signal the docking of a ferry minutes earlier will be replaced by a different rhythm of usage. Some argue that a smoother ebb and flow to the traffic along the Trans Canada Highway would absorb the impact of traffic increases. Others suggest that removing the certainty of when heavy traffic peaks occur would intensify the need to bypass communities where the arterial highway now supplements as a main street in the local area.

If, as Geoplan Consultants forecast, the fixed link will necessitate a four-lane roadway between Borden and Charlottetown, this will have a profound effect on land use and the landscape in this area. A first and central issue is whether the existing road would be widened, whether a new one is built, whether an alternative highway would be upgraded and utilized or whether some combination of these possibilities would be best. Each of these alternatives offers advantages and disadvantages.

To expand the width of the present Trans Canada Highway would alter the existing landscape because the existing setbacks would be completely changed. Houses, now sited on properties with a measured proportion of greenery around them would be much closer to a widened roadway, so the visual impact of ribbon development would become more intensified in a number of areas along this route. On the other hand, widening the highway would reduce the amount of land required for a such a project, when compared with the construction of a new highway.

Aside from the enormous financial cost of putting in place a replacement roadway, such a significant move would further fragment land tenures and remove significant acreages of open-space land now used largely for agricultural purposes.

A re-routed Trans Canada Highway could provide a unique opportunity for a restricted access roadway that is dedicated to moving high volumes of traffic from one location to another and is not available for localized short distance travel. But there are numerous precedents in North America to illustrate the consequences of this for land use in the immediate area: as traffic streams speedily along the "new" road, commerce situated on the "old" road withers. Two further considerations apply in the context of Prince Edward Island. Much of the existing Trans Canada Highway presents a panoramic view of the southern side of Queens County. A parallel roadway would likely lose that quality, exposing passing motorists to properties designed to face the public from another perspective, and perhaps sited more inland, thereby eliminating the pictorial beauty of the seascapes now visible along this route. Secondly, this whole area is at the core of what we have already identified as being that very part of the province most subjected to intensive land use pressures. Increased traffic, necessitating expansion of the Trans Canada Highway, will exacerbate these pressures. A solution that calls for an alternative highway will further compound the competing demands for land in the area. At the same time, any improvements to accommodate traffic patterns could well result in escalating the concentration of tourism in the "golden triangle" area, thereby intensifying pressures for yet further growth at a rate that outmatches development in this sector elsewhere.

Earlier we noted that the province called for "compensation for the impact of increased traffic on the Province's highway system". The "Bridge Concept Assessment", prepared by Public Works Canada and dated April 25, 1989, left no doubt that this condition had been met. At page 5-22, the BCA stated:

> The impact of the bridge on the road systems of the provinces PEI, New Brunswick and Nova Scotia have been the subject of a study by GeoPlan 1988. *Compensation has been negotiated and agreed between the provinces and the federal government on the basis of the recommendations of the GeoPlan report (see Section 7).* [Emphasis added.]

Relevant portions of Section 7, found at pages 7-5, 7-11 and 7-12 state as follows:

> A fifth mitigation measure relates to the effect of construction-related activity and future bridge traffic on local community roads and primary highways in both New Brunswick and PEI, as well as traffic build-up in Charlottetown and in the National Park areas. *Negotiations have been concluded (see Section 7.3) between the two levels of government concerning provincial highway systems.*
>
> ……………………………………………………………………
>
> *Construction sites and access roads will be limited to the already disturbed land along the PWC right-of-way.* The choice of any site located near the CJNWA, Noonan's Marsh, or other sensitive areas (see Section 4.4), as well as of sites that require harbour dredging, would present the greatest risks to the terrestrial environment. Thus before a construction site is developed, the developer will conduct a study to determine whether water supply in the surrounding community will be adversely affected by the increased demands of the construction camp. The selected developer will be required to present evidence that the water table will not be seriously depleted if deep wells are drilled. To prevent contamination of ground and surface waters, the developer will install drainage systems within the site and along access roads to contain surface run-off, sedimentation ponds, and an on-site wastewater disposal system.
>
> Restoration and revegetation of construction areas, borrow sites and other exposed ground will be completed as the construction proceeds. [Emphasis added.]

We understand that while there has been a general ERDA agreement between the province and the Government of Canada on the highway system, there has been no federal-provincial agreement concluded with respect to compensation for the impact of increased traffic on the Province's highway system.

It is essential, in our opinion, that the province be cognizant, at all times, that the fixed link project has been promoted by the Government of Canada in the belief that it will save money for the federal government. The province must ensure that such savings as may accrue to federal budgets are not translated into additional provincial expenditures because of direct or indirect effects derived from the project. Nowhere is this lesson more crucial than in respect to the highway system.

In view of these considerations, we recommend

- **THAT, in the event that the Government of Canada proceeds further with a fixed link project, the Province of Prince Edward Island undertake a critical evaluation of its future highway needs to determine not only appropriate compensation for the impact of increased traffic on the province's highway system but also to plan the changes necessary to that system in order to meet these needs.**

To investigate and report on "land use and quality of landscape issues in relation to the proposed 'fixed link' crossing" requires a multi-stage approach. There are four particular time stages that need to be addressed: (1) the pre-construction phase; (2) the construction phase; (3) the immediate post-construction phase of perhaps one or two year's duration; and (4) the long-term post-construction phase. Each of these time periods must be considered in terms of geographical areas of different dimensions. The boundaries on these areas are somewhat subjective but the general framework for a division would call for these categories: (1) the area directly and immediately affected by the construction itself; (2) the area adjacent to this construction zone; (3) the area of central Queens and eastern Prince counties between Summerside and Charlottetown; (4) the southern Queens area, particularly in and around Wood Islands; and (5) the province as a whole. The provincial highway system is one issue that has ramifications in all or most of these categories. Other issues are more time and/or locale specific.

Perhaps the first, most obvious, (but often overlooked) issue in terms of the quality of the landscape is the long distance coastal perception of the province itself. This is one dimension of the landscape certain to be altered by the construction of a fixed link crossing that utilizes a bridge concept. From the shores of the mainland, the coastline of Prince Edward Island, in ideal weather conditions during daylight hours, is seen as a far away shore, barely visible on a distant horizon. At night, weather permitting, clusters of tiny lights from across the dark waters - or the snowy white ice cap - of Northumberland Strait offer a promise of landfall beyond an otherwise void vista. These views, as they appear in and around the Cape Tormentine area, will be altered by a change that is essentially irrevocable, with the construction of a bridge. In daylight, the structure of the link itself, rising high above the water, will present a significantly different picture of what is, for many, the first impression of the province. At night, the change will be equally (or even more) pronounced, for lights from a bridge, gradually receding in the distance, will form an arc between mainland and Island, melding at the horizon with the onshore lighting.

This landscape issue was addressed briefly by The DPA Group Inc. in its "Preliminary Social Impact Assessment Northumberland Strait Fixed Crossing", at p. xiii:

> The fixed crossing would have effects on a number of qualitative aspects of the Island. *If a bridge were built, it would change the aesthetic quality of the views crossing the Strait and the trip across the Strait would become a different "experience".* If a tunnel were built, "tunnel phobia" might become a problem. Whether these changes would be positive or negative would depend largely on the values of the individual. In addition, the elimination of the ferry service would mean the end of an industry which has had a long and colourful history. Many Islanders would view the end of the ferry service as a loss to a part of the traditional Island way of life. [Emphasis added.]

As we indicated elsewhere, landscape perceptions may involve more than visual imageries. The alteration to the landscape caused by a fixed link is one example of this at work. While the landscape changes created by the visual impact of a bridge creates an improvement or a deterioration to the landscape is, we suspect, contingent to some extent on whether the individual viewer favours a fixed link. Certainly those who addressed the EARP hearings in support of a fixed link saw the bridge concept as an "attraction", both in the sense of being a curiosity, a marvel or an engineering feat and in the sense of being a potential enhancement to the landscape. Those who opposed the fixed link were more inclined to perceive a bridge as a detraction from the natural setting.

In the midst of numerous issues relating to the construction of the fixed link, issues often mired in complex scientific data and the potential for profound socio-economic consequences, this landscape issue may seem to be a trivial one. We would suggest it should not be dismissed outright as too inconsequential to consider, for the result of the construction is one of irrevocable change.

As a landscape issue, this change may be something more than aesthetic quality of the long-range view of the province on the vista presented in crossing the Strait. In support of this contention, we have taken into account the experiences in land use and the creation of visual imagery from a seemingly unconventional source: Walt Disney World Company of Lake Buena Vista, Florida. Normally, Disney World brings to mind children's entertainment in an amusement park setting. But this initial perception masks the fact that in becoming a world leader in entertainment, the Disney World empire has become a leading expert in transportation, communications and computer technology. This includes the ability to move masses of people in controlled settings as flawlessly as possible, as befitting an organization that can entertain crowds that may exceed 100,000 people on a *daily* basis in an amusement park of some 98 acres. Some interesting information emerges from the land use planning involved in such an exercise. First of all, the famed Magic Kingdom at Disney World is but a tiny fraction of the 27,400 acreage acquired by the Disney Company in planning its amusement park outside Orlando, Florida. The reason for such an expansive land base was rooted in the experience gleaned from developing an earlier amusement park in Anaheim, California. There, the citrus groves that originally rimmed the site soon gave way to commercial development over which the company had no control and the park had no protection for its surroundings. When planning the amusement park, Disney endeavoured to prevent a repeat of that situation and so the outer perimeter of the park's infrastructure (the Toll Plaza) was set some 4 miles from the nearest public highway. From there, it is another mile to the main entrance complex. Even then, Magic Kingdom visitors have not completed their journey, for there remains a brief ride by ferry across the manmade lagoon. Each section of the trip, we understand, was planned not only in the interests of transportation and crowd control but also for the imagery: to "heighten the suspense", and, by removing visitors from the workaday world, to "prepare them for the visual delights to come". Not only did Disney create a series of intervening landscapes to create the "proper" environment, but the ferry journey was intricately designed. The artificial lake was created in such a fashion that the ultimate destination, the Magic Kingdom, is barely visible at the outset of the ferry ride. Largely hidden by a manmade island in the midst of the lake, little of the final destination is visually to be seen until the ferry nears the shore. The Northumberland Strait, viewed by the pro-link supporters as a barrier to trade and prosperity, would seem to be just the psychological separation that the Disney corporation went to extraordinary lengths to create in order to achieve the imagery of a special destination.

One study undertaken in 1987 indicated that 71% of summertime visitors to the province considered the ferry service as an attraction. This percentage rises for visitors from particular destinations, particularly those whose expenditures as tourists are highest. What has not been analyzed, however, is whether this means the "attraction" lies within the ferry service *per se* or whether the "attraction" lies in the removal process, the creation of a barrier that separates visitors from the realities of their normal world and allows them to enjoy one separate and apart for their vacation time.

In the event that the federal government proceeds with the fixed link project, whatever intangibles that are involved in this dimension of the landscape will be lost. It is essential that the replacement structure be as "attractive" as possible from an aesthetic standpoint. So much of the discussion on this has centered on the engineering and design aspects, and their effects on the environment, it is easy to lose sight of some of the obvious ones.

It is our understanding that the Government of Canada proposes that this fixed link would be privately owned, built, maintained and operated for a thirty-five year period. On the subject of operation and maintenance, the "Bridge Concept Assessment" was general. "The developer will prepare a comprehensive and integrated operation and maintenance plan for the facility, extending over the term of the agreement. This plan will be subject to the approval of PWC", the BCA noted at p. 3-10. And, in a later reference, at pages 3-11 and 3-12, the BCA stated:

> *The facility will be maintained in a condition that will ensure safety, good appearance and a 100 year life.* The facility will be designed with the environmental operational and maintenance requirements in mind.
>
> Maintenance procedures will be based on the operation and maintenance plan as well as the Environmental Protection Plan agreed upon with PWC. It will include manuals covering all equipment and materials and will describe methods for maintenance and repair, as well as contingency planning and lines of command in the event of accidental spills.
>
> An annual inspection of the facility will be carried out to certify that the developer has met all obligations *to maintain the facility in good condition*. At periods of five years or less, a comprehensive inspection will be undertaken. All inspection and reporting will be performed by an independent and qualified inspection company. A computerized maintenance schedule and record system for all components of that facility will be set up. [Emphasis added.]

To ensure the quality of the landscape it is essential that the general *appearance* of the fixed link is maintained to a high standard. This is particularly crucial during the latter years of the private ownership of the facility, years in which the initial appearances have deteriorated and in which the private owner's incentive is to maximize return before transfer to the Government of Canada is required. While there has been a litany of complaints over the *service* provided by the ferries, the physical appearances have rarely been at issue. Any complaints in that mode could be directed towards Marine Atlantic (or its predecessor) and eventually be resolved through a political route. Ownership of the fixed link by a private developer makes this a different matter. Maintaining the facility in good condition may be synonymous with maintaining the facility in good appearance, but this is not necessarily so. It is the province and its image that will suffer, not the developer, not the Government of Canada, if a fixed link *looks* terrible through inadequate maintenance a few years into its operation. At that time it will be too late for the province to insist on the standards needed to ensure "good appearance".

Accordingly, we recommend

- **THAT, in the event the Government of Canada proceeds further with a fixed link project, the province endeavour to ensure appropriate high quality standards for the maintenance of the link's appearance over a thirty-five year timespan be included in the agreement between the developer and the Government of Canada.**

One aspect of the construction phase that has received little attention from the on-shore perspective is the dredging activity. The "Bridge Concept Assessment", at page 7-6, stated as follows:

> In keeping with the Ocean Dumping Control Act evaluation procedure, the selected developer will submit dredging requests, and will apply mitigative measures in order to satisfy the requirements of that Act. *These may include:*
>
> 1) scheduling of dumping activity in order to avoid the disturbance of sensitive species during migration or spawning seasons;
>
> 2) use of dredging techniques which minimize the resuspension of particles and the formation of turbid plumes;
>
> 3) selection of dumpsites in accordance with the Act's requirements;
>
> 4) possible use of silt curtains in low current or semi-enclosed areas;
>
> 5) *confinement of contaminated dredge spoils to the shore or landbased site.* [Emphasis added.]

Subsequently, the EARP panel requested information on the "impacts of dredging and spoil disposal" but limited their request to providing "chemical analyses of sediment and core samples for heavy metals and pesticides". The response, found at page G-1 in the "Supplement to the Bridge Concept Assessment", was as follows:

> The GIEE for the Northumberland Strait Crossing Project identified dredging and spoil disposal as having moderate to high-level risks during the construction phase of a bridge to Prince Edward Island. Analyses of surface sediments for several of the "prohibited and restricted substances" outlined in the Canadian Environmental Protection Act (1988), at four stations along the proposed crossing route, indicate little accumulation . . . . High tidal currents prevent deposition of fine particles that typically carry heavy metals and synthetic organic compounds. Earlier studies of metal and organic loadings in other offshore areas of the Strait and Gulf of St. Lawrence concur with these findings and also suggest underlying sediments and glacial till are comparatively free of these substances.
>
> Based on the data provided in the GIEE, the sediments in the study area will not pose any chemical contamination problem.

It would appear that the fixed link project could entail the use of inshore or landbased sites for dredge spoils and that such dredge spoils may involve contaminated material. We understand that on-shore dumping of dredge spoils has become a contentious landscape issue in the construction of the English Channel tunnel which, by its very nature as a tunnel project, would naturally be expected to involve much more product for dumping activities than a fixed link involving a bridge concept. Nevertheless, we are of the view the province must be mindful of the potential environmental and/or aesthetic threats posed by this possibility.

Accordingly, we recommend

- **THAT, in the event the Government of Canada proceeds further with the fixed link project, the province ensure it has the necessary legislative measures in place to regulate dredging spoils in such a fashion that the integrity of the landscape is preserved and the environment is protected.**

With certainty, we can forecast that a fixed link project will alter, irrevocably, the visual landscape at the Island's chief entry point. We can predict, again with certainty, that such changes will span the phases from pre-construction to post-construction. During the pre-construction and construction stages of the project, many of the changes are likely to represent a drastic deterioration in the landscape - as every construction project does. A disrupted environment with harsh noise, machinery aplenty, strange and unpleasant smells are the antithesis of pastoral serenity. This is to be expected and, in the normal course of events, citizens will tolerate what is known to be a temporary state of affairs, recognizing that things must look worse before they will look better. There are, however, at any construction site ways to minimize the unpleasantries: sites can be screened from view, heavy machinery can be given designated routes to follow to minimize dust and noise in populated areas etc. The magnitude of this project, the extended duration of the construction phase and its proximity to the major entry point to the province make it essential that there is much preliminary planning and necessary standards in place to minimize the aesthetic deterioration caused by the pre-construction and construction phases of the project.

Accordingly, we recommend

- **THAT, in the event the Government of Canada proceeds further with the fixed link project, the province assume a pro-active role to ensure aesthetic deterioration caused by the pre-construction and construction phases of the project is minimized.**

Land use and quality of landscape issues in relation to the Town of Borden and its surrounding environs have been largely ignored in the fixed link debate. This has happened for two reasons. First of all, the fixed link project in relation to this area has centered on the employment issue. Secondly, environmental issues, particularly as these relate to changes in the natural environment, have been given a central focus because of the review process.

Because of the latter, one land use component has been examined in some detail - the water and sewage capacity in the area. However, the Jacques, Whitford "Report to Environment Canada Conservation and Protection on Groundwater Resource Evaluation Project", dated June 10, 1988, made no mention of the fixed link project in its examination of Borden, one of the 12 areas sampled in its study. Indeed, at page 83, the Jacques Whitford forecast on Borden's population seemed totally uncognizant of any possibility of disruption to the traditional ebb and flow of community life. "It is expected", said the consultants, "that the community population will remain basically static over the next number of years, with perhaps some modest increases, thus a community water supply should be designed for a maximum population of 700." It would appear that talk of a fixed link with potential housing needs for several hundred workers in the Borden area was not taken into account in this assessment.

The Jacques Whitford study identified a number of problems with water quality in Borden. These were outlined, at pp. 81-2, in the following terms:

> Water quality analyses indicate a hard to very hard calcium bicarbonate groundwater . . . . Areas in which salt water intrusion has affected water quality have very hard water, and high sodium and chloride concentrations. Water quality problems consist mainly of high chloride concentrations, and occasional high bacterial count events. There are only random cases of high iron and manganese concentrations. There have been several small areas affected by the gasoline spills.
>
> These petroleum hydrocarbon spills consisted of about 63,000 l of diesel oil spilled from the Maritime Electric tanks (south of the town) in 1980. About 46,000 l were recovered, and to this point, no wells have been affected. There was a loss of 4500 l of gasoline at the ESSO station at the corner of Highway 1 and Highway 10 in 1979, which also hasn't affected any wells. There also may be contaminated soil at the former Irving Oil bulk storage facility next to the existing Petro-Canada station. . . .
>
> Other potential problem areas include the sewage lagoons which are located north of the centre of the community, on the other side of the railway tracks, the underground storage tanks located at the service stations, and several other sites. There was a road salt storage pile located across from the Petro-Can station, and although this location is now covered, there may be some residual contamination of the groundwater in the immediate vicinity. There are also several areas outside the immediate town boundaries with a potential for nitrate contamination because of existing farming operations. These areas should be avoided when siting a potential community water supply well.

The Jacques Whitford study "estimated that 75% of the community has presently been affected adversely by groundwater contamination, either manmade or natural, or has the potential to be impacted". Concerns about water quality are also reflected in the Jacques, Whitford recommendation on the potential site for a water supply well for the community, contained in a passage at page 84:

> Based on the location of the water quality constraints (gasoline plumes, salt water intrusion, underground storage tanks, high iron and manganese areas, sewage lagoons, road salt pile, and potential nitrate areas), and the topographic conditions, it is recommended that a water supply well be located adjacent to Well No. 1 of the pump test, adjacent to the railway tracks, east of Highway 10, . . . *Salt water constraints necessitate the location of the well at this distance from the town.* A single 25 cm diameter well, drilled to 60 m may supply sufficient water quantity at this location. An alternative location is on high ground about 950 m north of the first location. Wellfield protection measures that should be adopted are described in the main body of this report. [Emphasis added.]

Both surface water and residential well water quality in Borden were explored by P. Lane and Associates Limited in volume 1 of the "Terrestrial Baseline Study for the Fixed Link Landfalls in New Brunswick and Prince Edward Island". Portions of this study were of particular interest to us, not only because of our examination of land use and quality of landscape issues in relation to the fixed link but also because the findings provided some specific examples of the concerns we have raised in the more general contexts of water, soil erosion etc. in other portions of this report. For example, the water quality analysis of the Cape Traverse River found a nitrate + nitrite count as high as 3.60 mg/l in February of 1989, whereas the Canadian Water Quality Guidelines for freshwater aquatic life, issued by Health and Welfare Canada in 1987, recommended a maximum level of 0.06 mg/l. A total coliform count of 380.00 organisms per 100 ml was found at Noonans Marsh Brook (or Stream) in October of 1988; the recommended standard is less than 10 organisms per 100 ml. A standard of zero is recommended with respect to the fecal coliform count but the consultant found a count of 164.00 per 100 ml. at Noonans Marsh Brook (or Stream) during on sampling. Accordingly, the study concluded, at p. x:

> Noonan's Marsh Stream and Cape Traverse River appeared to be *affected by the leaching of fertilizer from nearby fields* as indicated by concentrations of sulphate, chloride, nitrate, nitrite and magnesium which exceeded recommended values. Coliform counts were also elevated, particularly in Noonan's Marsh Stream probably indicating *contamination by manure* [Emphasis added].

As for the residential well water in Borden itself, P. Lane and Associates surveyed a number of wells in both Borden and Bayfield (New Brunswick) in October of 1988. Portions of the findings, contained between pages 5-1 and 5-5 of this report are worth citing:

> A total of . . . 79 wells were inventoried on Main St., Borden Ave., Howatt St., and Carleton St. in the Village of Borden, Prince Edward Island. The inventory includes most but not all of the well users in each area, but is considered to be a good cross-section of the residential water supplies in each area.
>
> The bacteria and chemical water samples were analyzed at the Environmental Chemistry Laboratory of the Victoria General Hospital in Halifax, Nova Scotia. All samples were analyzed as received from the individual water supply (e.g., unfiltered and unpreserved) within two days of collection. Selected samples (47) were analyzed for a full suite of major ions and metals, and the remaining samples were analyzed for a modified "Health - 9", which includes the major health parameters and indicators of well problems. Bacteria samples were analyzed for both total and fecal coliform bacteria. ....
>
> Well water quality is typically hard to very hard (hardness 220 mg/L) calcium bicarbonate groundwater with *areas of saltwater intrusion and occasional high bacterial count events. There have been several small areas affected by gasoline spills. Problems with seawater intrusion have been documented in Borden.* Available water quality data and a well water survey for chloride distribution conducted by PEIDCCA indicated seawater intrusion in the vicinity of the Ceretti Apartments, telephone offices, and Senior Citizens complex.
>
> Several cases of fuel oil contamination were investigated by PEIDCCA in the Borden area. An investigation of a 4500-liter loss of gasoline at the Carleton ESSO in 1975 concluded that rapid flushing of the product had occurred, and no adjacent

wells were polluted. A release of waste oil from a 500-gal tank at the Carleton ESSO station in 1979 was found to be threatening the shallow (12.2 m deep, 6.1 m casing) water well at a nearby motel. Gasoline (0.75 mg/L) was detected in a residential well adjacent to the Petro Can station in October of 1986. Site inspections of the Irving bulk tanks were frequently made. An investigation of a 63,000-liter spill of diesel fuel at the Maritime Electric generating station identified five wells that could be affected by hydrocarbon contamination. *Borden, like many communities supplied from individual well water supplies, is at risk from urban impacts on the groundwater regime.*

Well Construction

In Borden, average well depth is 27.7 m, varying from 7.62-122 m. The majority of wells are typically 10-30 m deep, and average 24 years in age, with some wells being in excess of 75 years in age. Casing length averages 12.5 m and ranges from 4.6-182.0 m. The average domestic well yield is about 0.6 L/s, although yields of up to 5.6 L/s have been reported from some test wells. The well diameter is generally 100-127 mm for domestic wells, and 150-200 mm for industrial wells. The water bearing zones appear to be evenly distributed with depth, with the greatest yields occurring at 17-23m below ground. *This relatively shallow aquifer resource is prone to contamination from surface activities, and also to seawater intrusion in low-lying areas.*

A number of deep production wells are located in the area, including the CN Marine wells (122 m deep, 55.5 m casing; and 61 m deep with 8.5 m casing), Borden Senior Citizens' Home (three wells about 30 m deep producing 1.2 L/s), and three test wells 61 m deep. Pumping tests performed in 1967 on 3 x 200 mm diameter test wells 61 m deep, drilled along the railway right-of-way, west of Highway 10, spaced 350-450 m apart, exhibited continuous safe yields of 3.8 L/s, 4.9 L/s and 4.5 L/s, respectively. A long-term combined safe yield of 1150 m3/d (175 igpm) was set for these wells to limit the possibility of seawater intrusion (Proctor, Redfern, Bousfield & Bacon, 1969). Short-term pumping rates in the order of 7.6 L/s were suggested for these wells. Aquifer transmissivity is in the range of 447-894 m2/d and storage coefficient is in the order of 1 x 104. These wells were drilled in response to a proposed causeway construction at that time.

Bacterial Quality

A total of 12 wells (15%) of the Borden wells were found to exceed the 10 per 100 ml total coliform bacteria health standard, with values ranging from 10-52 counts/100 ml. *About 33% of the wells had detectable total coliform bacteria counts (one to 52/100 ml). Only seven wells . . . reported fecal coliform bacterial indicative of sewage contamination.* These wells were old, and very shallow in depth (9.2-31 m, mean 20 m) and of unknown construction. Most wells with detectable bacteria were less than 30 m deep. Most of the affected wells are located in a small area south and east of Howatt Street. . . .

Bacterial contamination of residential wells appears to be a common problem in Borden. A broken sewer line was found to be the cause of severe bacterial contamination of two wells on Howatt Street in 1987. *A survey* of 66 water wells carried out *in 1979 indicated that 11 wells (17%) were unacceptable for drinking,* and that most of these occurred on Borden Avenue.

Chemical Quality

Table 5.2 presents the results of chemical analysis for the Borden residential well survey. The survey indicated that the bedrock water quality can be classified as moderately hard to hard (average 200 mg/L), alkaline (mean alkalinity 140 mg/L, range 70-320 mg/L), calcium bicarbonate groundwater with a TDS in the order of 250 mg/L. With the occasional exception of iron and manganese, all parameters are within the Guidelines for Canadian Drinking Water Quality, Health & Welfare Canada, 1987 for uncontaminated wells. The most common water quality complaints received during the well survey was hardness, with a few instances of turbidity and color, usually after a period of heavy rain (indicative of leaking well casing), and a few cases of seawater intrusion.

In Borden, there appears to be a problem with salt contamination of many of the wells. Although only three wells exceeded the health limit of 250 mg/L chloride (Canadian Water Quality Guidelines, 1987), 43 (54%) of the wells surveyed showed some evidence of salt intrusion with chloride concentrations in excess of 60 mg/L and elevated TDS concentration ranging between 350-1830 mg/L. . . . Although seawater intrusion is a risk everywhere in Borden, the main areas are identified as the low-lying regions north of the Trans Canada Highway, around Carleton Street, and adjacent to the marsh.

Nitrate and nitrite concentrations ranged from 0.2-9.5 mg/L, averaging 3.9 mg/L. *None of the wells exceeded the 10 mg/L nitrate limit, although 15 wells had nitrate concentrations over 5.0 mg/L.* The pH exhibited a range of 6.1-8.1, averaging 7.62.

The well water is electrochemically neutral (Langlier Index) near 0 at 500C, and would be expected to have a small scale-forming tendency at heating temperatures. Hardness was the most common complaint from residents, with more than half of the wells surveyed having total hardness values in excess of 180 mg/L, which is classified as hard water. Several homes had water softeners, which effectively reduced the hardness, but increased sodium concentrations to the 100 mg/L range.

Conclusions . . .

A problem with salt contamination of residential water wells currently exists in the Town of Borden. The source of this salt is presently undefined; however, in consideration of the low elevation of the town with respect to sea level (average 6.5m), static water levels in wells at or near mean sea level, and the density of well development, either seawater intrusion or road salting could be responsible.

In Borden, seven wells . . . reported fecal coliform bacteria indicative of sewage contamination. Most of the affected wells occur in a small area of the town near the east end of Howatt Street. This should be brought to the attention of local health inspectors for follow-up.

The overall bacterial quality of the Borden wells appears to be better than that observed in the Bayfield area. This may be largely because of deeper wells and casings within [the] Town, and due to past hydrogeological studies and remedial actions carried out in the town.

In Borden, an opportunity is available to construct a well field capable of supplying the demands of the construction camp, and also supply the community. A well field could be developed in the vicinity of the 1967 pumping tests, about two kilometres

> *inland from the town. The presence and potential impact of various water quality constraints such as gasoline plumes, leaking sewer lines, saltwater intrusion, underground storage tanks, sewage lagoons, road salt piles, and potential nitrate areas, topography, and the assumed position of the fixed link landfall, must be addressed in the selection and development of a central water supply.* Hardness and salt contamination appear to be the main concerns.
>
> Based on the above study, it is concluded that the residential water wells within the Town of Borden are highly prone to saltwater contamination from seawater intrusion.
>
> For the 514 people of Borden, an average daily water demand of 245 m3/d, (37 igpm) is required, with peak flows of 14 L/s (185 igpm). Possible water supply production well locations to serve both the construction camps and the community include the area of the 1967 pump test, adjacent to the railway tracks, east of Highway 10, and an alternative location on high ground about 950m north of the first location, which would be a prime location for a major construction camp. There is opportunity for additional well field exploration farther inland.
>
> Borden was selected as one of the communities for groundwater resources exploration in the near future as part of the Canada-P.E.I. Water Agreement (Jacques, Whitford and Associates Limited, 1988). This work is scheduled to be carried out over the next two years. *It is therefore recommended that any water supply development scheme for the P.E.I. fixed link be integrated with the establishment of the water supply for the Town of Borden.* [Emphasis added.]

Elsewhere we have recommended a province-wide plan to improve sewer and water infrastructure in communities and Borden would be encompassed in such an exercise as a matter of course. However, the potential of a nearby construction site involving what has been identified as the second largest project ever undertaken in the Maritimes could put the community in a special situation. Its requirements for improved infrastructure, its resources to meet such a challenge and its needs in relation to those of other communites assume a very different set of variables should a fixed link project move forward. At this stage, we cannot go beyond identifying this need and indicating our view that Borden must receive special and sympathetic consideration in this matter should the fixed link project proceed.

Accordingly, we recommend

- **THAT, in the event the Government of Canada proceeds further with the fixed link project, the province recognize the special needs of the Borden area in relation to its infrastructure, particulary in regard to the establishment of a water supply system, and respond in a positive way to assist the community in meeting these needs.**

In addition to the disruptions created by construction *per se*, the magnitude of the project suggests there will be many changes attributable to the construction. Central among these will be facilities and services for the labour force required for this mega-project, together with auxiliary requirements for the physical demands of the development. The extent to which construction will focus on Prince Edward Island is not clear from the fixed link documentation and this is a central issue to be clarified in order to determine how much these secondary components will affect land use and the landscape on this side of the fixed link. Nor is it clear from the documentation how much of this will be unquestionably the responsibility of the developer and/or the Government of Canada and how much will face other levels of government and/or the private sector. Among the consultants' reports there are visionary suggestions for long-term utilization of structures constructed to provide auxiliary facilities but no longer required for such purposes after the link project is completed. Again, it is unclear to what extent such proposals have or will become "fact" - accepted as prerequisites in the development - and what remain as nothing more than possible suggestions which will never be implemented by either the Government of Canada or the developer.

What is clear to us, however, are two essential points. First of all, in the event that the Government of Canada proceeds with the fixed link project, there will be severe impacts for the area in and around Borden. Consider, as an analogy, a "one-industry" town being told by the leading employer that changes will result in its workforce being cut by 90%. Naturally, the community can forecast devastating consequences unless it takes remedial action. But this analogy is not precisely the situation here, for the employer has, in effect, said that in order to effect the change, there will be need first to double or triple the workforce for a few years. In other words, it is necessary to gear up for a big boom, unprecedented in the area, then there will be an economic bust of equally unprecedented magnitude, one that takes away not only the boom but also the economic stability enjoyed for nearly a century. Secondly, the capacity of the area to deal with this roller coaster is painfully at odds with the optimism expressed in the documentation supplied in connection with the fixed link project.

The Town of Borden made a presentation at our hearings and, on the subject of the fixed link, the brief from the municipality stated as follows:

> The fact that Borden is a landlocked town with the village of Carleton Siding in one direction and the sea at our back door, our town boundaries have little room for extension. The proposed fixed link construction would limit land space in our immediate area, would certainly alter the beauty of the landscape and once again it would change our Island way of life, not forgetting to mention the environment and the many other ramifications concerning the proposed construction. We know you are aware of Borden's position on the fixed link and we hope that you fully understand the point that we do not have land within or beyond our boundaries to be purchased or expropriated for any tunnel or bridge to the mainland.
>
> You might say, "It's the same old cry in the night", to listen to these words from our town pleading with you, the Commission, the Government of Prince Edward Island and the people of this province to please become involved, everybody, and tell the governments WE DO NOT WANT A FIXED LINK!! Let us remind you that builders of any fixed link would be non-residents who will put something into place that will be here for infinity regardless of the side effects on environment, etc.

In our subsequent discussions on this brief with the presenters, it was apparent the community has centered its energies on the debate over whether or not the project should proceed. Beyond the recognition of the need for an improved infrastructure within the community to cope with the water quality problems, it was apparent to us that the municipality has not begun to grapple with the land use and landscape issues inherent in this project if it should proceed on the doorsteps of the municipality. While part of this delay can be attributable to the fact that the community directed its priorities and energies into highlighting commencement of the project, the municipality was further handicapped from lack of information: neither Marine Atlantic nor Public Works Canada were disclosing future plans for much of the land within the municipality - land now owned and used in conjunction with the ferry service and/or railway.

The Bridge Concept Assessment, at pages 5-2 and 5-3, demonstrated some cognizance of this issue; but only in a general way.

> During the construction phase of the project (including pre-construction), the majority of impacts will be concentrated in and near communities where the construction activities will be occurring. Social impacts will be most directly experienced in local impact areas, i.e. communities adjacent to labour camp(s) and construction sites; economic impacts will be more broadly experienced in source areas for labour, construction materials and equipment, contractual services and supplies.
>
> The major construction phase impacts at both the local and regional level are summarized in Table 5-1, which also includes a summary of possible mitigation and compensation measures, along with monitoring and contingency requirements. Table 5-1 applies to local impact areas in both provinces (PEI and New Brunswick).
>
> Given a work force concentration of several hundred in a local area, and the full range of changes in activities, traffic and settlement patterns called for by the construction project, it is expected that the pre-construction and construction phases of the project will have their most immediate social and economic impacts at the community level. *Regional planning frameworks are in place in all the provinces to deal with potentially adverse impacts which might otherwise be experienced in the construction, lay-down, and staging areas during the construction phase.* This has been a matter of concern because of the sensitivity of small-scale community environments to major construction projects. [Emphasis added.]

This is very much an over-statement on the level of planning in place or the expertise now available within the province to handle such a project as this. Land use planning, even in the absence of a fixed link, has not been implemented in the area. While the basic tools (the "framework") is in place for land use planning to occur, traditional planning undertaken in the province has usually been centered on existing usages and on zoning concepts. The province has no experience in land use planning for the temporary boom of a mega-project. The closure of CFB Summerside has provided some guidance in the problems involved in the downward side of losing a large-scale operation. But, early involvement in land use planning issues affecting the fixed link project does provide certain opportunities, for it enables the planners to map out alternative usages once construction is complete. Left in the hands of the Government of Canada and/or the developers, however, these opportunities would not likely be forthcoming.

To some extent, these aftermath issues have been dealt with, at least at the fanciful level, in some of the fixed link studies. But concepts such as alternative uses for a (possible) construction camp, development of an interpretative centre on the logistics of building the fixed link etc. are not defined with enough certainty to know whether or not they are destined to go beyond the idea phase. Adequate land use planning can impose standards that ensure structures have the necessary components to be permanent ones, for example, thereby providing some measure of assurance that the promises of today become the realities of tomorrow.

It seems to us that there is something inherently *wrong* to have a mega-project, destined to have profound effects on the province as a whole and on the Borden area in particular, planned almost exclusively by the Government of Canada, the potential developers and a collection of consultants. In the event the Government of Canada proceeds further with the fixed link project, both the Town of Borden and the province must develop a pro-active stance in this project. "Monitoring" the activities of the Government of Canada, the developers and the consultants will not suffice.

Earlier, we recommended that communities with adjacent municipalities be united so that, among other things, capacity to deal with land use planning issues will be strengthened. This would mean the Town of Borden and the adjacent Community Improvement Committee of Carleton Siding would coalesce into one municipal structure. We believe that the local government basis for dealing with the challenges posed by the fixed link project would be strengthened by this unification. Indeed, the furtherance of the fixed link project would render this amalgamation compelling if these commmunities are to face the future with a strong and unified voice.

In light of these considerations, we recommend

- **THAT, in the event the Government of Canada proceeds further with a fixed link project, both the province and the local governments in the Borden area adopt an intensive, pro-active stance towards land use planning in the area.**
- **THAT, in the event the Government of Canada proceeds further with a fixed link project, the province provide immediate and extensive land use planning assistance for the Borden area, including the professional services of a land use planner and a landscape architect and that these professionals have some expertise in either rural land use planning and/or in mega-project planning.**

A "mega-project", such as the fixed link will be, promises a large number of jobs within a small area, an area hitherto not accustomed to having an economic boom. Many of these jobs, by necessity, will be seasonal and peak demands for labour will coincide with the maximum needs for workers in the agriculture, tourism and fisheries sectors. "Mega projects" normally result in partial or total reallocations of labour patterns and wage relationships. For instance, while the region may be equipped to supply 50 carpenters, it may not be able to supply 250 welders. So welders relocate from other jurisdictions but carpenters do not. If the welders are accustomed to a different scale of pay and recognize the demand for their services, they will want - and may be able to obtain - better wages than local welders have traditionally experienced. Any pre-existing pattern of wage differentials between the two trades is gone and reverting to it after the project is complete will be difficult, if not impossible.

Most of the labour demands relate to the construction sector, so the competition for employees with these skills will be most directly felt in relation to land use that calls for construction-type development. During the construction phase, for example, the competition for carpenters and electricians would likely impact on the price of labour for housing and other construction projects. This would affect land use - either driving cost of developed land upwards, delaying construction on other land or otherwise affecting the marketplace.

Even though the competition for jobs most directly affects the construction sector, we foresee effects on all other sectors in two indirect fashions. First of all, there are some job categories that involve skills not needed exclusively by the construction sector. While office personnel is the most obvious example, people employed in positions in catering and security would normally be employed in a number of areas of the economy, such as tourism or processing. Secondly, because of a variety of factors (the unskilled nature of some positions, variable skills of personnel and traditional patterns of high unemployment) the fixed link project will provide unprecedented job opportunities that enable employees to abandon previous work positions and this re-allocation will have spin-offs in all sectors.

An obvious example would be the individual who is trained in a skilled labour but who, because of an inability to find work in that post, has accepted less skilled work in a semi-related or unrelated field. The fixed link project now offers an opportunity to use earlier training, but, for the employer of that individual, the fixed link project has meant a replacement worker must be found. Less obvious - but no doubt a more frequent occurrence - is the example of a worker about to move up, financially, by terminating one type of position and going to work on the fixed link. Depending on wage scales, there may be attractive options presented to those employed in low-paying jobs now in agriculture, tourism, forestry and fishery to seek jobs on the fixed link project as labourers or deckhands, or in catering or security.

In addition to the direct positions required for the fixed link itself, there will also be job opportunities created as spin-offs from the project. For example, the proposal to house many workers nearby in a construction camp implies a need for services and amenities in the area that would create other jobs. Along with the opening of the McCain processing plant in the same geographical area, we are concerned about what these changes will do to the labour market in relation to employment needs such as agricultural workers.

An added factor in this mix is the labour force dislocation and job losses caused by the closure of C.F.B. Summerside. For the past year attention has been focused on endeavours to replace this job loss. In one way this provides the mirror image of the re-allocations created by the fixed link in that persons who lose their employment as a result of the Base closure may need to seek alternative positions that do not use their skills or that force them to accept a downward move financially.

All of these factors are converging in a geographical area sufficiently compact that they impinge basically on one labour pool. However, any attention in relation to these issues has been centered on numbers alone. Although the primary emphasis has been adding and subtracting job gains and losses, a secondary consideration has been made in terms of wage and salary data. But these changes and potential changes are likely to be far more complex than this. Just as the need for 600 ironworkers has little effect on the problems of 600 unemployed workers, none of whom have the skills for these jobs, the fixed link project may not provide such a wonderful boost for the economy during its construction phase if the re-allocations in the marketplace results in the inability of economic sectors being placed in an uncompetitive position in the marketplace.

This concern was explored, briefly, by Overseas Canadian Project Management and Planning Inc. in its report on "Economic Development Opportunities Borden-Tormentine Areas". Its data, contained in Exhibit 2-1, at page 52, showed that agriculture was the leading employer in Prince County where 11.4% of the employed labour force was engaged in that sector. The Prince Edward Island "study area" (which included the Town of Borden, the communities of Carleton, Bedeque, Central Bedeque and Kinkora, and Lots 26, 27 and 28 of Prince County) demonstrated an even greater proportion of agricultural dominance with 26.0% of the work force being employed in that sector. The reported noted, at page 23:

> It seems likely that the agriculture industry, and industries associated with agriculture, will be adversely affected [*sic*] if a number of unskilled and semi-skilled workers are drawn from the study area to work on the construction project. This is because those industries employ the largest number of workers, and, because there were only 105 experienced construction workers residing in the study area.

Further, at pp. 50-1, the report gave an indication on community views with respect to this issue:

> Among the general business community, there is a concern that they will have difficulty keeping staff during the construction phase because of higher wages offered by the developer. *This may also be a major problem in the important agricultural community surrounding Borden-Carleton and could have a devastating effect on the agricultural sector.* [Emphasis added.]

In the absence of current labour force data and firmer information on labour force requirements for the fixed link project in relation to the Prince Edward Island sector of its construction, it is impossible to forecast whether labour demands will constitute a solvable problem or a "devastating" one for agricultural land use in the area in the proximity of the fixed link project. Nor is it possible to forecast whether such an issue would be confined to this area or would be felt province-wide. However, we do see this as a land use issue to which the province must direct its attention and one that must be taken into account in contingency planning.

Another land use issue in relation to the proposed fixed link crossing is the changes in climate that might occur and the effect such changes would have on the agricultural sector. There is considerable documentation regarding the relationship between ice, water temperature and the fishery. Little, however, was said in relation to correlations between ice, water temperature and the inland climate, particularly the coastal agricultural micro-climate. The EARP called for supplementary information on the "impacts on agriculture, such as might be caused by. . .climatic changes (possibly resulting from changes in ice regime)".

This issue was addressed specifically in the "Bridge Concept Assessment Supplement: Socio-Economic Effects Within the Region and on Particular Communities". There, at p. 11, it was stated:

> There is concern among farmers in the potato growing areas east and west of the bridge terminus on PEI that the bridge construction may result in air and soil temperature changes, which in turn will have an effect on the timing of seed germination, particularly for early potato varieties.
>
> Studies have not been undertaken in Canada to establish the impact of climate changes on the germination of potato varieties grown on PEI. Studies in Europe have indicated that potatoes will not sprout at soil temperatures of less than 5C; at 5C tubers will emerge but the plant will not take root. Temperatures in excess of 5C are required for both sprouting and early stem growth. (MacKerron, 1982)
>
> The literature states that several factors are important in sprout development, including whether some pre-sprouting had occurred at the time of planting, depth of planting, degree of soil saturation, as well as soil and air temperature. Depth of planting can vary sprout emergency by several days.
>
> The literature also indicates that in areas of unstable weather early planting may not confer an advantage; an early period favourable for growth may be followed by less suitable conditions. One study conducted in Scotland reported that the net effect of a 4-week spread in planting was a change of 6% in potential yield. (Jeffries and MacKerron, 1987) That same article indicated that the use of sprouted seed provides a greater effect than the advantage of early planting, in that "advantage in earliness of (plant) emergence is lost in the second phase as the canopy development (then) occurs at lower temperatures and so at a slower rate."
>
> It would appear from the literature that unless it results in significant temperature changes the bridge crossing will not significantly affect seed germination or crop yield. Recent work has shown that the expected temperature shifts, given a worst plausible scenario, would be in the order of 0.84C during the June-August period. (Bercha and Associates, 1989)

Later, in the same report, the consultant (Smith Green & Associates Inc.) minimized the changes in land use that would result from the fixed link; impacts on agriculture were dismissed in this passage at p. 14:

> Significant changes in land use and ownership have been occurring within PEI Agriculture over the past decade. The more important changes between 1976 and 1986 have been: A 23% decline in the number of farms on PEI; an 8% decline in the total farm acreage; a 60% increase in the number of farms in excess of 400 acres; a general increase in the size of farms and in both production and yield (Agricultural Statistics, 1988). There has also been a change in transportation from mixed rail/highway modes to almost complete highways transport, and a trend towards land leasing as an alternative to outright purchase. Land withdrawn from production has tended to be poor quality soil, unsuitable for intensive farming.
>
> These changes are expected to continue irrespective of a fixed crossing, due in large measure to the economics of the industry. *Agricultural specialists generally do not expect that a fixed crossing will have significant impacts on land use.* [Emphasis added.]

We are not convinced that land use impacts on the agricultural sector can be so readily barred from serious consideration. Expert opinion in relation to the effects of a fixed link on ice conditions in Northumberland Strait were varied. The conclusion that . . . "the expected temperature shifts, given a worst plausible scenario, would be in the order of 0.84C during the June-August period" is in relation to water temperature, not air temperature or soil temperature. The "Ice/Climate/Fishery Interaction Study" of December, 1989, stated, at page 5-40:

> Air temperature (AT) was uncorrelated with all of the biological variables. It was negatively correlated with freezing degree-days, but this was to be expected given the definition of degree-days. Its correlations wiht the other physical variables is either ambiguous or zero. As such, it will not be discussed further.

This study enumerated six conclusions from its analysis of ice break-up seasons and seven conclusions arising from its physical parameter correlation studies in this exerpt found at pages 6-2, 6-3 and 6-4:

> The inherent characteristics of the data have been identified to illustrate the complex and inter-related nature of the parameters and the results. Given the above limitations of the available data, the following conclusions were drawn:
>
> *Conclusions from Analyses of Ice Break-Up Seasons*
>
> a. The nature of the break-up season in Northumberland Strait is largely governed by the wind regime during the same period.
>
> b. The incursion of ice into Northumberland Strait from the main body of the Gulf of St. Lawrence can delay the final date of clearing by up to 30 days.
>
> c. Because the ice break-up is largely controlled by the wind regime, considerable movement of ice takes place throughout the break-up season.
>
> d. Although the ice clearance in Northumberland Strait is largely associated with movement of ice out of Northumberland Strait, the final ice in Northumberland Strait deteriorates and melts in situ.
>
> e. In any year, certain zones in Northumberland Strait may be clear of ice up to 30 days prior to other zones.
>
> f. The date of last ice in Northumberland Strait varied up to 67 days, depending on the zone, over the 21-year period considered.
>
> *Conclusions Arising from the Physical Parameter Correlation Studies*
>
> a. The ice severity index is not directly related to the severity of the winter as measured by the number of freezing degree days.
>
> b. When the proportion of winds blowing from the north and east quandrants throughout the winter is also considered, reasonable correlation between ice severity and the number of freezing degree days, together with the wind proportions, is obtained.
>
> c. The length of the ice season is strongly related to the ice severity index.

d. Although the mechanism of break-up is driven by winds, the introduction of wind statistics does not improve the correlation.

e. The occurrence of late ice seasons is strongly related to the proportion of east winds blowing during the month of March.

f. The May, June and July surface water temperatures are strongly related to ice severity, and the temperature and wind speeds prevalent during the same month.

g. The August water temperatures, however, are not related to ice severity.

At the present time, the leading variety of potatoes grown in the province is the Russett Burbank; its role in the potato industry is described by the *Report of the Royal Commission on the Prince Edward Island Potato Industry,* at pp. 137-8, in these terms:

> The Russett Burbank. . .is the most popular variety grown on the Island and has achieved a dominant position. It is used by the french-fry plant at Cavendish Farms, is sold on the tablestock market, has found a strong market in the count carton trade, and is also sold on the seed export market. However, *the Russett Burbank is found to be less adaptable to climatic change than other varieties.* The adoption of this variety by the Island potato industry has been phenomenal, given its relative obscurity on the Island in the 1960s. *Russett Burbank produces high yields, but is also a very late-maturing potato, making it susceptible to the uncertain weather conditions of the autumn.*

Repeatedly we have been told that in growing Russett Burbank potatoes, producers are endeavouring to grow a 140-day potato in a growing season of 120 days. This variety accounts for about 40% of the Island's potato acreage.

From this discussion, we do not wish to infer that ice conditions or any potential delay in ice out in Northumberland Strait will have a significant impact on the coastal micro-climate or, indeed, that it will ahve any impact. We do, however, wish to emphasize that, in our opinion, this issue has not been subjected to the same rigorous analysis as the ice and climate variables in respect to fisheries and water temperatures and that any potential climatic effects on air or soils could impact on land usage in relation to the agriculture industry where the Russett Burbank component of the potato industry is especially vulnerable to climatic change.

Another long-term and province-wide land use and landscape issue associated with the completion of the fixed link project is the increase in tourism and seasonal residents forecast in connection with this facility.

We are not prepared to endorse the claims predicting a fixed percentage (usually cited as 25%) increase to tourism as a result of this project. Nor are we prepared to gaze into a crystal ball and prophesy the demand for summer cottage lots generated by this improvement in transportation.

However, we are of the opinion that the excitement generated by this aspect of the project should be subjected to some thoughtful analysis. Data presented in the documentation presented in relation to the fixed link studies indicate that traffic increases associated with completion of the project would stem from the time savings inherent in the updated form of transportation. Consequently, the induced traffic increases would be derived largely from the Maritime tourist market.

The present tourism industry is already heavily dependent on visitors from the other Maritime Provinces. The 1988 "Tourist Exit Indicator Survey", for example, found that 51% of visitors to Prince Edward Island between May 15 and October 31 were residents of either Nova Scotia or New Brunswick. This study also reported that visitors from these destinations displayed the lowest expenditure patterns. At p. 4, the survey stated:

> Visiting Ontario parties spent an average of $431 per trip in Prince Edward Island; New England parties, an average of $395; other U.S. parties, $378; and Quebec visitors, about $340 per party. Nova Scotia and New Brunswick visiting parties accounted for expenditures of $245 per party per visit. Although Newfoundland and other Canadian provinces were not our major tourism markets, their respective average party expenditures were quite high at $711 and $516.

The impact of this data is readily apparent when other information in this Survey is examined. At page 43, the tabular statistics showed 70,912 tourist parties from Nova Scotia spent $17,337,337 in Prince Edward Island, while 41,412 tourist parties from Ontario spent $17,857,552. Taking into account the average party size (2.1794), this translates into one single statement: more than 150,000 visitors from Nova Scotia contributed less to the tourism economy of Prince Edward Island than some 90,000 visitors from Ontario. On the assumption that the effects caused by a set number of visitors on provincial natural resources would be the same, we must question the wisdom of a tourism policy centered on the escalation of numbers of visitors rather than one focused on maximizing revenues and minimizing costs.

The ramifications of increased tourism numbers on land use in the province are difficult to quantify. It is widely accepted that more tourists add to existing strains on the sewer and water sources, the fragile coastal areas and other natural habitat. As well, public costs for infrastructure and the inconveniences of congestion become more pronounced.

Some of our observations in this area have been gleaned from the "Tourism Impact Study for Prince Edward Island" prepared by Abt Associates in 1976. It is interesting to note the relative accuracy with which this consultant group was able to predict the future of tourism. The report outlined four possible scenarios and it would seem that the first of these is closest to what transpired in the fourteen years since then. Using that alternative, the consultant forecast a tourist level of some 765,000 visitors by 1985, a level close to actual figures now. (In 1988 there were 715,000 visitors in the May 15 to October 31 interval. The economic recession early in the decade of the 1980's, together with rising gasoline prices, can account for the failure to meet the projected growth rate in the allotted time.) Many of the themes in the prophecy hit familiar chords, as this passage from 15-16 of the "Executive Summary" indicate:

> *Development Alternative #1: Continuing growth in tourist parties over the next ten years, with no major policy changes to discourage, encourage or redistribute tourists on the Island.* Essentially, this scenario projects the likely impacts of tourism in 1980 and 1985 if current patterns are left to continue as they are. These impacts include the following:

> - Average annual growth, estimated at 2.8% would result in an increase in tourist parties to 253,000 parties in 1980 (about 666,000 people) and *290,800 parties* in 1985 *(about 765,000 people)*. This presents an increase over 1974 levels of 18.2% by 1980 and 35.9% by 1985.
>
> - Value added to the Island economy will increase at a comparable rate, reaching $23.9 million in 1980, $27.4 million in 1985.
>
> - *Tourism activities, development and economic benefits will continue to be concentrated in the Charlottetown/Summerside/Queens triangle. However, resistance to tourism development in Queens, already significant but not unbearable due to congestion and crowding impacts, will intensify.*
>
> - Islander acceptance of tourist increases will probably be maintained through 1980, but could become severely strained by 1985. *Unless Islander attitudes change, the "psychological limit" of tourist growth will probably be reached* by, or before, 1985.
>
> - *Impact on the physical environment from continuing litter and trash disposal problems, directly related to tourism, will increase and require greater attention. Sewage disposal, especially in Cavendish and Stanhope, could require major investments in order to prevent serious localized pollution problems.*
>
> - *In the absence of careful zoning and planning, unsightly strip development and sprawl---particularly in Charlottetown and Summerside---will marginally compromise the scenic quality of portions of the Island.*
>
> - *Although it is unlikely that the physical limits of growth will be reached, increased tourism will increase the chance of damage to the Island's sensitive coastal zone. Without a comprehensive tourism development plan and sensitive regulations to guide growth, the threat to the coastal zone will increase annually with the growth of the tourist population.* [Emphasis added.]

One of the alternative scenarios portrayed in this study considered the effects of a tourism policy based on uncontrolled, maximized growth. Starting from the base of 560,000 tourists who visited P.E.I. in 1974, the consultants looked at a growth rate of 7.8% that would result in 873,000 tourists in 1980 and 1,280,000 tourists in 1985. While the maximum in this range is greater than the forecasted increase created by completion of a fixed link (and greater than the stated goal of one million visitors annually by the year 2,000 in *Tourism 2000*), the forecasted consequences provide some indications of the potential land use and landscape effects that stem from future growth in tourism within this range of numbers. Accordingly, at pp. 134-5, the study offered this possible set of outcomes:

> *Under a scenario of policy to encourage maximum growth without comprehensive land use planning and proper development controls, the following impacts are likely to occur:*
>
> - Average annual growth is estimated at 7.8%, which would bring about 333,000 tourist parties to the Island by 1980, 487,000 parties by 1985. The increase over 1974 levels would be about 119,000 parties (c. 313,000 people) in 1980, 273,000 parties (or 720,000 persons) by 1985. This represents a tourist growth of 55.6% through 1980 and 127.6% over the 1974-85 period.

- Such tourist growth could only be achieved if accompanied by a change in the mix of types of tourists visiting the Island. Under the provisions utilized here who are typical tourists would increase from a current level of about 61.7% to 70% by 1985. Friends and relatives would show the largest relative decrease, accounting for only 16.8% of total tourists in 1985.

- *Resident acceptance of this growth would be strained to the limit.* If current attitudes were maintained, the limit of tolerance might be reached as early as 1979. Unless there were a substantial change of feeling---perhaps occasioned by visible economic gain and improvements in the standard of living---it is hardly inconceivable that "maximum" growth would be even partially acceptable to Islanders.

- The economic impacts of maximum growth are compelling. Provincial tax revenues from tourist expenditures would increase from $2.4 million in 1974 to $3.8 million in 1980 and to $5.6 million in 1985. Total value added to the economy would rise from its current $20.2 million level to $32.1 million in 1980, an increase of 59.2%. By 1985, value added from tourist expenditures would reach $47.7 million, an increase of 136.1% from 1974-1985.

- The changed mix of tourist types would account for about $400,000 of the valued added in 1980 (3.4% of the increase) and about $1.9 million (6.9% of the increase) in 1985.

- *Environmental impacts, in the absence of careful and comprehensive planning, would be severe. Current localized or moderate problems with litter, trash disposal and sewage disposal would become major. More roads would be needed. Scenic quality would be compromised in many areas, especially Queens County.*

- *Major capital investments by the Province and/or localities would be required in less than ten years to supply expanded services during the summer, to build and maintain roads and to handle trash and sewage disposal volumes.*

- *The demand for roofed accommodation would increase dramatically.* About 6430 units would be required by 1980, an increase of about 80% over the current capacity of 3575. By 1985, fully 10,240 units would be needed, approximately 760 new units per year between 1980 and 1985. Moreover, *most of these new accommodations would be seasonal, since there would be no demand for their use during the off-season.*

- The demand for campground facilities would increase comparably with the growth in tourist parties. Given the currently lukewarm feeling among Islanders toward encouraging more campers, this demand is not likely to be welcomed.

- *The guidance of a comprehensive land use plan, encompassing the entire Island and covering all dimensions of land development, would be needed, and needed quickly to minimize the negative environmental impacts of high tourist growth.*

- *Even with a comprehensive plan, it is uncertain whether the sensitive coastal zone could weather the impacts of rapidly increased use. While in the absence of data one cannot conclude that the literal physical limits of growth would be reached* by 1980 or 1985, *one can say that maximum growth could pose a genuine risk to the natural resources which make the Island attractive to tourists and residents.* [Emphasis added.]

It has been nearly fifteen years since these forecasts were made so the financial information is meaningless without suitable conversions to account for both inflation and possible changes in spending patterns. Regardless of these deficiencies, we are of the view that this scenario provides a number of themes that, in a general way, touch on the various dimensions of this issue in today's context.

One aspect of this issue that has not been adequately addressed is the challenge presented by crowd control in peak season in the tourism industry. At the present time, limits on the peak number of visitors are "controlled" largely by the capacity of the existing ferry service (supplemented by other modes of transportation). Through experience and the incremental increases in capacity brought about by new ferries, the tourism industry has been able to cope without any major catastrophes. For example, in the summer of 1989, some 15,000 Boy Scouts and staff could be hosted at the peak of the summer season because proper planning and organization enabled everyone to prepare accordingly. A fixed link, with a reported capacity of 1,000 vehicles per hour, will drastically increase the peak capacity of traffic volume able to reach the province in a relatively short timespan. Information contained in the "Compendium of Comments on Supplementary Information to the Bridge Concept Assessment Document" indicated that, in 1989, the "daily need" in July involved 13,135 passengers, 4,728 cars and 3,648 trucks, but on the busiest day there was 21,259 passengers, 6,289 cars and 371 trucks. It would appear the fixed link would have almost four times the capacity required to meet the "busiest day" demand. In our opinion, it is not economically feasible to have a tourism industry in readiness for a worst/best case scenario but without some degree of preparedness for a new peak that is, realistically, impossible to forecast (except within maximum capacity of the transportation structure), the province could be confronted with a surge of visitors that produce a host of problems and a public relations disaster. The province is no stranger to the controversies and challenges presented by one-shot events that have the potential of attracting large crowds of visitors for a short duration. The fixed link, however, would enable the numbers to be magnified substantially. Depending on the contingency planning to prepare for such possible occurrences, the weakening of the crowd control mechanism inherent in the ferry service could have devastating localized consequences for the land and/or landscape in a very short timespan.

Those who have forecast the effects of the fixed link on the soci-economic sectors of the province have indicated that the project will result in an exacerbation of summer cottage demand among non-residents. While this, too, is clearly a land use and landscape issue, the quantum of effects are dependent on a multiplicity of variables. We are of the view that such factors as land prices, interest rates and the general state of the economy will have far more impact on this demand than the presence or absence of the fixed link. The measures that government puts in place to regulate growth in this sector will also be an important determinant. The impacts of additional cottage development in the province remain the same, whether the fixed link is constructed or not; its effect lies in altering the level of demand for this type of land use. However, any factor that increases demand for cottage development intensifies the need for comprehensive land use planning and the application of suitable land use policies.

Consideration of these potential changes brought about by the construction of a fixed link does point to the need for a pro-active stance on the part of the province, combined with a structure that would provide comprehensive, contingency planning. To ensure proper coordination, this planning structure must be closely aligned with or part of the planning structure targeted to develop and implement a comprehensive land use plan for the province.

Accordingly, we recommend

- **THAT, in the event the Government of Canada proceeds further with a fixed link project, the province institute comprehensive contingency planning, closely aligned with its comprehensive land use plan, in order to accentuate the positive aspects of this project and to mitigate the potential negative effects.**

RECOMMENDATIONS, a summary

CURRENT SITUATION:

- THAT government develop and implement consistent and cohesive land policies that are fairly and evenly applied and uniformly enforced.
- THAT one of the cornerstones to these land policies is the adoption of a comprehensive set of land use plans for the entire province.

AGRICULTURAL PRESERVATION:

- THAT the province recognize its agricultural land base as its most important natural resource and coordinate government policies towards the preservation of agricultural land.
- THAT a comprehensive set of land use plans include a central objective aimed at keeping the most productive farmlands in agricultural use.
- THAT, as part of this land use planning exercise, a study be undertaken to identify vacant farmland, including all land with agricultural potential that is not being so used and farmland that is now being ill-used.
- THAT agricultural land in public ownership be subject to restrictions on its use and tenure before control through leasing or ownership is transferred to the private sector.
- THAT the Agricultural Development Corporation, in particular, and the province, in general, adopt a land policy that avoids the fragmentation of agricultural lands.
- THAT the Agricultural Development Corporation institute and promote a long-term "Humpty Dumpty" project (that is, of land assembly) within its own holdings and the agricultural community.

RURAL VERSUS URBAN:

- THAT the right-to-farm principle be adopted as part of a comprehensive land use policy.
- THAT the province obtain further information on right-to-farm legislation used in other jurisdictions with a view towards implementing immunity from legal liability and injunctive relief remedies in private nuisance law suits involving noise and odor complaints for agricultural producers carrying on farming operations in conformity with permitted land use provisions.

LAND OWNERSHIP VERSUS LAND USE:

- THAT the quantum limits on land ownership, as contained in the *Lands Protection Act*, continue to form part of land policies.
- THAT the province commit itself to the active and ongoing administration and enforcement of the *Lands Protection Act*.
- THAT the province initiate an immediate and thorough investigation of all persons and corporations having a landholding in excess of 750 acres to determine if there are reasonable and probable grounds to issue orders pursuant to Section 12 of the *Lands Protection Act* and, where such grounds exist, utilize the enforcement procedures contained in the legislation.
- THAT the *Lands Protection Act* be amended to ensure that the interests of both the lessee and the lessor fall within the definition of "landholding".
- THAT the *Lands Protection Act* be amended to require that all leases and land management agreements must be written and registered to be valid, without limiting the term to any prescribed length of time.
- THAT the *Lands Protection Act* be amended to increase fines so that the current prescribed maximum fines are converted to minimum fines.
- THAT Section 14 of the *Lands Protection Act* be amended to include employees and mortgagors.

ROADS:

- THAT land use policies recognize the importance of roads in effective land use planning.
- THAT the province develop a transportation plan which can be utilized as part of a comprehensive land use plan to better plan future development activities both on a provincial basis and in conjunction with municipalities, other interested groups and the general public.
- THAT land use policies recognize the arterial highway system as a vital element in maintaining the social and economic fabric of the province and maintain that system to provide the highest level of mobility, dependability, economy, comfort and beauty available.
- THAT additional access to the arterial highway system be eliminated.
- THAT existing access to the arterial highway be eliminated where an alternative access to the highway system is available.
- THAT existing access to the arterial highway be stringently controlled to prevent a change of use that would increase the use of the adjacent property.

- THAT the collector highway system be studied to determine its existing role and future potential in the transportation system.

- THAT the local highway system have safe access standards for all uses and higher standards for more intensive uses with appropriate legislative changes to prevent abuses that impinge upon safety standards.

- THAT land use policies restrict development on unpaved, seasonal or non-essential roads where the change of use would result in increased public costs that outweigh, in the long-term, the public benefit of the development.

- THAT the scenic heritage road program be re-named to "rustic roads" to avoid confusion with the scenic drive program.

- THAT, to preserve our traditional heritage, many more such roads be designated, particularly in Prince and Kings counties.

- THAT the views of local residents be sought and respected in choosing such roads, and that some means be devised to involve local residents in the clean-up of such roads similar to the existing roadside clean-up program.

- THAT these roads be inspected and maintained in accordance with the objectives of the program.

- THAT the start and finish points on scenic drives be better delineated.

- THAT portions of the Blue Heron Drive, now routed along Route 6, be re-routed to bypass North Shore traffic congestion.

- THAT land use policies take scenic drives into consideration by subjecting adjacent areas with careful development controls to curtail extensive ribbon development and cottage subdivisions.

COMMUNITIES:

- THAT a comprehensive land use plan for the province include municipal reform.

- THAT community improvement committees be abolished with appropriate amendments to the *Municipalities Act*.

- THAT the boundaries of incorporated areas be reviewed for the annexation or amalgamation of adjacent land in order to encompass growth settlements; to take into account areas where land use plans have been effectively developed by community improvement committes; to plan for future municipal expansionary needs and effective infrastructure development or other long-term requirements; and to rationalize boundaries with natural and non-natural divisions in each area.

- THAT the province review the services it provides unincorporated areas in its role as the municipality for these areas and, in conjunction with such a review, examine the feasibility of revising its property tax structure.

- THAT the province, in conjunction with the municipalities, explore ways to provide more cost-effective servicing and enhanced capacity for both the municipalities and their personnel.

CHARLOTTETOWN:

- THAT the urban area for the capital of the province be placed under the jurisdiction of a single municipality by appropriate legislative amendments enacted in 1992 to enlarge the boundaries of the City of Charlottetown to include as a minimum, the suburbs of Sherwood, Parkdale, East Royalty, Hillsborough Village and West Royalty as well as any incorporated or unincorporated areas necessary to ensure the new capital area includes the urban core bounded by the York and Hillsborough Rivers and that, in the interim, the province assist the six municipal units in negotiating the details of whatever transitional provisions are necessary to achieve this unification.

- THAT the enlarged capital jurisdiction have a land use plan with sufficient visionary outlook to retain ample open space, greenery zones and agricultural use areas for the enjoyment of future generations; that it contain a greater enhancement of the heritage component, that it provide for future urban growth in all sectors of land use including provision for a heavy industry (rough yard) industrial park, and that it provide for future urban transportation needs, including pedestrian-oriented components and an examination of public transportation needs.

- THAT the area around the enlarged capital city be designated as a buffer zone extending at least 5 miles and preferably 10 miles from the nearest urban boundary and that there be stringent growth management controls imposed in this buffer area, for a ten-year period including a total moratorium on all major developments within the buffer zone; a moratorium on all residential housing starts except on serviced lots in municipally-incorporated areas with the exceptions of replacement units for housing that has been destroyed by fire or other disasters, providing such replacement has been commenced within a one-year period; a prescribed limit to the number of housing starts that may be undertaken in each year in municipally-incorporated areas in the buffer zone; a limit on the expansion permitted existing developments and new small-scale developments in the buffer zone, with the exception of additional structures for agricultural operations; and stringent highway access limitations for all major routes into the urban area, include Routes 1 (Trans Canada Highway), 2 (Hunter River to Charlottetown and Mount Stewart to Charlottetown) and 15 (Brackley Point Road), accompanied by access modifications for presently existing accesses to these highways.

CAVENDISH:

- THAT the *Municipalities Act* be amended to repeal the concept of "resort area" or "resort municipality".
- THAT the province determine its policies for the tourism industry in relation to land use issues.
- THAT future growth in Cavendish be controlled in the context of such a policy.
- THAT until such time as the province has determined its policies for tourism in relation to land use issues and until such time as the water and waste water management problems in Cavendish have been resolved, the province place a moratorium on seasonal and/or tourism-related growth in Cavendish.

SHOPPING CENTRES:

- THAT a comprehensive land use plan continue to include provisions regulating land use in relation to major retail development and that the sunset provision contained in Section 43 of the *Planning Act* must be repealed.
- THAT the regulatory controls relating to major retail development be revised so that major retail development projects are restricted to incorporated municipalities with official plans that contain provision for major retail development.
- THAT the province accept the responsibility for approval of all major retail developments.
- THAT approval from the municipality where the development is to be located be a prerequisite to approval by the province.
- THAT an impartial impact statement be prepared for the province at the developer's expense.
- THAT the essential components of an impact statement be included in the legislation and mandate a review of land use impacts and public costs arising from the development.
- THAT the required elements of a development agreement be included in the legislation.
- THAT any such agreement be a tri-party agreement between province, municipality and developer.
- THAT the developer be required to bear the indirect public costs arising from the impact of the development.

- THAT landscape/design standards be among the components of any development agreement.

- THAT the appeal procedures in relation to major retail development and other major developments be synchronized.

- THAT the definition of major retail development be revised to prevent evasion of the regulatory controls.

- THAT the legislation contain strengthened mechanisms to place and enforce terms and conditions on development, including the explicit power to issue demolition orders where necessary.

SUBDIVISIONS:

- THAT the province examine the public costs of residential development at different levels of housing density.

- THAT, pending the completion of such a study, there be no approvals granted for any major subdivisions outside the boundaries of towns and villages unless the property is first annexed to the adjacent municipality.

- THAT the province study the economic impact of recreational residences in relation to the tourism industry and the public costs associated with this form of housing.

- THAT, pending the results of such a study, the province approve no major summer cottage subdivisions unless the development is accompanied by an agreement that calls for quality development, including the installation of centralized sewer and water services, underground utilities, cables for telephone and electricity, design standards for housing, quality roads, and adequate security for performance.

- THAT the province review all summer cottage subdivisions and institute a program of sunset provisions that would cause approvals on unmarketed subdivisions to lapse after a reasonable period of time.

NON-RESIDENT OWNERSHIP:

- THAT the Lieutenant-Governor-in-Council alter its current policy with respect to the perfunctory exercise of its discretion towards excess land purchases by non-residents pursuant to the *Lands Protection Act* to one of granting permission only in pre-determined or most exceptional circumstances.

- THAT the *Lands Protection Act* be amended to require the Lieutenant-Governor-in-Council to table annually in the Legislative Assembly the amount of land owned in the province by non-residents, the amount of shore frontage owned by non-residents, the transactions to which it has given consent pursuant to the *Lands Protection Act* and the reason(s) why consent was given in each instance.

- THAT the *Lands Protection Act* be amended so that the Lieutenant-Governor-in-Council has the pwoer to issue a divestment order in respect of any aggregate landholdings in excess of five acres or 165 feet of shore frontage where the property was acquired during a short period of residency but the owner can no longer meet the residency criteria in the *Act*.

- THAT the province adopt a land policy in respect to the leasing or sale of Crown lands to non-residents that would permit such transactions only when they are in the public interest.

- THAT the Land Use Commission commence the active monitoring and enforcement of covenants included in land identification agreements.

- THAT the Department of Finance proceed with implementing a Geographic Information System with a data base that would enable it to effectively monitor and analyze patterns of land ownership and land use, together with other variables.

- THAT as soon as the GIS is available, the province undertake a study on non-resident land ownership in conjunction with recommended studies on vacant farmland and seasonal residences, taking into account soil, water and other conservation issues and data.

- THAT, upon the completion of the GIS-based studies of non-resident ownership, the province determine whether it is in the public interest to restrict further or otherwise alter the existing provisions of the *Lands Protection Act* in relation to non-resident ownership of land in the province.

OFF-SHORE ISLANDS:

- THAT a comprehensive land use plan include a firm, consistent policy with respect to the off-shore islands.

- THAT this policy prohibit any further development on any of the off-shore islands.

- THAT this policy include protection for wildlife and other natural features of the islands.

COASTAL ZONE:

- THAT the province endorse a coastal zone policy applicable to the whole province.
- THAT urban municipalities with well-developed areas within the coastal zone should conform with the rules developed for the coastal zone for the province as a whole.
- THAT land use planning include water resources such as bays, rivers and streams.
- THAT greenbelts for areas adjacent to rivers and streams be included in comprehensive land use plans.
- THAT the province encourage community groups, including youth groups, to adopt a stream in their local area.
- THAT the province rigorously enforce measures designed to protect beaches and sand dunes, particularly those aimed at preventing vehicular damage.
- THAT the province utilize the educational aspects of its beaches and sand dunes through an interpretative centre.
- THAT the province ensure the long-term preservation of the Greenwich area in its natural state under public ownership.
- THAT comprehensive land use plans include areas for natural preservation.
- THAT the province continue to encourage and support volunteer groups whose aims and objectives assist in preserving and enhancing natural areas.

PLANNING:

- THAT the province develop a more pro-active, creative stance towards land use planning.
- THAT public participation, including widespread use of the local media, be a central feature of land use planning.
- THAT the province, particularly the Department of Community and Cultural Affairs, adopt a more realistic approach to public awareness of land use planning, including the preparation of pamphlets and other materials for user groups, the use of computers to illustrate alternative planning mechanisms, a regularized program of public education through conferences, community schools and other forums and periodic displays on land use planning concepts at fairs, exhibits and trade shows.

- THAT legislation, regulations and other written materials associated with land use planning be prepared, as much as possible, in simple terms that can be readily understood.

- THAT the province undertake greater inter-departmental coordination in respect to the development, administration and application of policies and standards relating to land use.

- THAT comprehensive land use plans for the province include a municipal planning exercise such that those municipalities which now have official plans commence a planning exercise. In all instances, this municipal planning must be accompanied by the boundary rationalization and/or annexation/amalgamation of adjacent areas (or community improvement committees).

- THAT the province establish a realistic target date for the attainment of such a goal by all municipalities, with the proviso that municipalities which do not have official plans in place at that time endanger their eligibility for provincial grants pending the adoption (or revision) of official plans.

STRUCTURES:

- THAT the Land Use Commission retain its present role as an appellate body.

- THAT this role be extended to allow the Land Use Commission to operate as an appellate body from land use decisions made by all municipalities in the province.

- THAT any and all legislation and policies aimed to excluding the Land Use Commission from adjudicating on land use issues - including environment issues - be repealed.

- THAT future appointments to the Land Use Commission endeavour to provide a broader representation of socio-economic interests, including persons with previous experience or interest in municipal matters.

- THAT the Land Use Commission be given the power to impose conditions on its approvals and the means to ensure conditions are met.

- THAT the Land Use Commission be given power to suspend a building permit until appeals have been exhausted.

- THAT the Land Use Commission be given the power to issue demolition orders.

- THAT the Agricultural Development Corporation be given the resources needed to implement responsible land stewardship requirements; to resume its role as a true land banking agency; and to exercise its mandate on "rural" development.

- THAT the Agricultural Development Corporation commence a land management program for all of its properties.

- THAT the Agricultural Development Corporation establish itself as a role model for proper land management.

- THAT the Agricultural Development Corporation impose appropriate conditions on the sale and rental of its properties to encourage proper land management and preclude both land speculation and fragmentation, including conservation covenants, non-development measures, the acquisition of the right of first refusal to the Crown on any subsequent resale by a purchaser and/or prohibitions against further subdivision by purchasers.

LANDSCAPE:

- THAT the landscape be of paramount consideration in government activities.

- THAT the integrity of the landscape be an essential component in land policies.

- THAT the province promote greater public appreciation of the role of the working landscape in the provincial economy.

- THAT the province retain the services of a landscape architect/planner to facilitate better land use planning and design.

- THAT the province prepare an extensive inventory of special landscapes, that encompass both vistas and seascapes, with widespread input from the general public and from community groups and organizations.

- THAT a comprehensive set of land use plans include protective mechanisms for these special landscapes, using such means as limitations, or, where appropriate, prohibitions against any form of built development.

- THAT the province designate a generous number of scenic lookout points along roadways, particularly those roads that are included in the scenic drives and those which are major highways, and, as road construction occurs near any designated point, construct appropriate places where motorists can park off the highway to view the scenery.

- THAT the province undertake special measures to enhance the landscape at the entry points of the province, particularly at the Albany interchange.

HISTORIC PRESERVATION:

- THAT historic preservation of our built environment be an essential component of land use planning policies.

- THAT the P.E.I. Museum and Heritage Foundation embark on a province-wide recognition program for all older structures in the Province to promote awareness and pride in buildings that have been part of the Island landscape for the last 50 years or more.

- THAT the P.E.I. Museum and Heritage Foundation proceed with despatch on completing an identification of heritage groupings and areas (including churches and graveyards) which contain an unusually high proportion of heritage building stock in a relatively unspoilt environment and that the Province provide adequate resources to the Foundation to ensure this identification is completed as soon as possible.

- THAT heritage buildings, heritage groupings and heritage areas identified in these survey projects be marked and, if necessary, legislative provisions be enacted to provide for this marking project.

- THAT there be a heritage review process linked to the issuance of building permits such that proposed renovations or additions to identified heritage buildings or new construction within identified heritage groupings or areas would be subject to review and that there be some discretion to refuse the issuance of building permits where proposed changes or new construction conflict with the goals of heritage preservation.

- THAT the P.E.I. Museum and Heritage Foundation be provided with sufficient resources to upgrade its architectural conservation services.

- THAT historic preservation of archaeological remains be an essential component of land use planning policies.

- THAT the province proceed with the recommendations made to the Ministerial Committee on Heritage and Museum Policy in relation to archaeological remains.

- THAT a provincial strategy on the exploration of the Island's archaeological resources include components that coordinate educational and tourism opportunities and local development possibilities.

RAILS TO TRAILS:

- THAT in the event the ownership of railway lands is acquired by the Province of Prince Edward Island, title should remain in the public domain and ownership rights should not be transferred by gift, sale or otherwise to private owners.

- THAT title to the rail lands be vested in the Agricultural Development Corporation and that this agency have the responsibility for management of these lands.

- THAT the lands belonging to the rail corridor be used for linear recreational purposes.

- THAT the trail project be planned and coordinated through the Agricultural Development Corporation.

- THAT the Agricultural Development Corporation be given sufficient resources to hire staff on a short-term basis during the planning stages of this project to plan and coordinate the project.

- THAT the trail coordinator/planner work with local community organizations, municipalities and individuals to initiate participation and cooperation with such a project and to take an active role in planning the project.

- THAT the trail project be developed with a heavy emphasis on voluntarism as an essential component for its development and maintenance.

- THAT the trail coordinator/planner, with the assistance of the private sector, develop suitable standards for the trail, rules for user and participating groups, and common themes to unify the project throughout the Province.

- THAT the project have the support of government expertise and resources to augment the private sector in this endeavour.

- THAT in the development of the rail line corridor for linear recreation, priority be given as much as possible, to areas that lie to the east of Charlottetown and to the west of Summerside.

- THAT the rail line corridor be leased to private sector organizations for public recreation under specific terms and conditions once the planning phase has been completed.

- THAT once leasing has been completed, A.D.C. continue to retain a general managerial and supervisory role to ensure leasing conditions are fulfilled and, if necessary, to find new sponsors for the trail corridor or portions of it.

TREES:

- THAT one of the components of a comprehensive land use plan include the identification of lands best retained for forestry usages.

- THAT the Crown adopt a policy of assembly of larger blocks of forested land over time.

- THAT in some areas, vacant farmland be dedicated for forest usage, even if the soil classification is Class II or Class III, and, be preserved for this usage for an extended number of years.

- THAT the *Forest Management Act* be amended to require public review of the State of the Forest Report.

- THAT the regulations required for effective administration and enforcement of the *Forest Management Act* and the standards associated with forestry incentive programs be put in place.

- THAT government adopt a more balanced approach to individual rights and obligations under the *Forest Management Act* with government adopting a more pro-active approach towards land stewardship in relation to woodlot owners.

- THAT there be firmer policies in providing forestry incentives to prevent abuses and ensure long-term stewardship of land that has benefitted from public funds.

- THAT government provide more public education on land stewardship in relation to forested land, including the obligations imposed by the common law upon property owners.

- THAT incentives available through property tax rates for land dedicated to long-term forestry use under management plans be examined.

- THAT much more Crown land be dedicated to model tree plots, including plots that include a variety of non-commercial species.

- THAT government must continue and intensify its efforts on forest rehabilitation but that its policies must be combined with more recognition for the non-commercial benefits of trees.

- THAT there be greater emphasis on hardwood management in the Province, particularly in the provision of hardwood species for plantations.

- THAT government spearhead a program, extended over several years, for dead tree removals, particularly in areas adjacent to roads, in hedgerows and in other areas of high visibility.

- THAT there be prohibitions against clear-cutting along all waterways in the province and enhanced restrictions against clear-cutting along roadways.

- THAT forestry policies allocate a greater priority to those components that operate as an adjunct to agriculture, including more attention to the preservation, enhancement and management of hedgerows and other shelter belts.

- THAT the province, in conjunction with municipalities and community groups, develop and implement imaginative schemes to prompt more emphasis on the non-commercial aspects of forestry, including the planting of hardwood belts along roadways, the use of more trees in the landscaping of public buildings and in the symbols used to mark special events.

- THAT more funding and publicity be provided to the Landscape Assistance Grant Program with municipal and community groups being used to participate on a wider basis.

WATER AND SEWAGE:

- THAT the Province of Prince Edward Island provide the necessary leadership to ensure long-range water and sewer services for the greater Charlottetown area, including a commitment to share costs with the various jurisdictions and to promote a co-ordinated effort to ensure a regionalized and standardized service under an expanded water authority that uses the long-standing expertise of the Charlottetown Water Commission.

- THAT a province-wide plan be developed to ensure communities and other densely-populated areas have adequate off-site water and/or sewage systems, where required, whether through expansion or upgrading of present infrastructure or new development.

- THAT the province commit more adequate resources for the improvement and/or expansion of water and sewer infrastructure so that a more intensified program, based on the plan, is cost-shared with the municipalities.

- THAT those municipalities which require off-site servicing and that cannot receive ratepayers' support for participation in the provincial plan to improve water and sewer infrastructure become ineligible for any provincial funding to cost-share subsequent remedial actions and that such a freeze be imposed for a long-term period of 10 years.

- THAT the participants in this plan to improve water and sewer infrastructure examine new means of meeting this challenge, including consideration of the "Self Help" program; and that, as a minimum, the Department of Community and Cultural Affairs (in conjunction with the P.E.I. Public Utilities Commission and the Federation of Municipalities) prepare informational materials and provide these to all municipalities so there is a clear understanding among the volunteer laypeople involved in municipal government and local residents of the necessary legal, financial and practical steps involved in undertaking a capital expenditure project of this type and the alternatives open to them through such devices as large lot subdivision requirements.

- THAT provincial policies, including the location of public buildings and the issuance of building permits for new construction, should seek to enhance communities that have taken steps to preserve the quality of their water resources.

- THAT measures prohibiting raw sewage from entering streams and rivers and measures involving standards for the installation and maintenance of on-site wells and septic tanks be publicized and strictly enforced.

- THAT the respective roles and functions of the Public Utilities Commission, the Department of Community and Cultural Affairs and the Department of the Environment in regard to sewer and water issues be clearly defined and appropriate changes in legislation be made where necessary.

- THAT appropriate measures be taken to ensure better coordination mechanisms in order to streamline sewer and water planning, development and regulation between departments and the Public Utilities Commission, as well as between and among various jurisdictions, other utilities and other agencies.

- THAT the Department of Community and Cultural Affairs, in conjunction with the Department of Agriculture, develop greater public awareness on the means of preventing point source contamination of groundwater, particularly where such contamination stems from hazardous waste and/or agricultural practices.

- THAT the comprehensive land use plan for the province include developmental controls for the protection of watershed areas in order to preserve water quality.

GARBAGE:

- THAT the derelict car program be given greater prominence and, in particular, that its availability be more widely publicized and that a renewed effort be made to have public cooperation in removing abandoned car bodies from the Province.

- THAT the existing provisions of the *Automobile Junk Yards Act* be strictly enforced to ensure that collections of derelict car bodies are removed through the derelict car program or located in a properly licensed junk yard and that automobile junk yards and their contents are entirely screened from view in accordance with the legislation.

- THAT the penalties in the *Automobile Junk Yards Act* be amended so that the fine for the first offense is not less than $100 and not more than $1000 (with imprisonment of not more than 30 days in default of payment) and so that the fine for the second and subsequent offenses is not less than $1000 and in default of payment not less than 90 days imprisonment.

- THAT derelict farm implements and machinery be part of the recycling program now involving derelict motor vehicles.

- THAT the *Automobile Junk Yards Act* be amended to include farm implements and machinery within its provisions.

- THAT the Department of the Environment develop a program on the disposal of hazardous waste and that such a program include both consumer education on what constitutes hazardous household waste products and an immediate and ongoing system for the collection and disposal of this type of waste.

- THAT the Minister of the Environment review the effect of the Litter Control Regulations after one year of operation and, if littering from fast-food sources has continued to be a problem, that the Province of Prince Edward Island should consider the imposition of more stringent measures, such as a financial levy of five (5) cents per item for each disposal container, package or utensil used by fast-food take-out establishments, a ban on the use of certain types of disposable containers, and/or substantially increased financial penalties for littering.

- THAT the Province call upon the Government of Canada for measures to reduce effectively junk mail volume.

- THAT the Province review all its paper requirements with a view to eliminating waste and, wherever possible, participating in paper recycling programs and generating demand for recycled papers. In particular, to demonstrate political leadership, stationery and greeting cards used by the Premier and members of the Cabinet should utilize recycled paper and the practice of widespread circulation of greeting cards at Christmas should be eliminated. In addition, government publications that receive a high public profile, such as tourism literature and annual departmental records, should use recycled paper, wherever possible.

- THAT the Province ask the U.P.E.I. Faculty of Business Administration to have students prepare projects that examine potential recycling industries that would be feasible for Prince Edward Island.

CHEMICALS:

- THAT the Province undertake a comprehensive survey of pesticides to determine exactly which pesticides are used, by whom, how frequently, at what application rates, on how much acreage, where and in what quantities, whether used on the farm, in the forest or in residential settings.

- THAT licensed sellers be required to maintain records regarding the sale or other disposition of pesticides, that these records identify exactly which pesticides are involved (and not just such composite categories of insecticides, herbicides and fungicides), that annual reporting of such data be mandated, and that the Province institute a data bank which would include such information.

- THAT the Province plan and implement a phased-in system of tighter regulatory controls in relation to chemicals that are used as pesticides and that such a plan include a mandatory licensing system for all users and compulsory safety courses as a prerequisite for obtaining or renewing licenses.

- THAT government make users of pesticides aware of their potential liability position under the common law.

- THAT the Pesticides Control Act Regulations provide standards for ground spraying.

- THAT the Pesticides Control Regulations include measures relating to the safe use of chemicals in residential settings.

- THAT the data bank on pesticides include such information on farm chemicals as compatibilities and incompatibilities, "cocktail" effects, biomagnification and other data that would assist producers in providing and improving their food safety assurances.

- THAT the Province continue and accelerate its programs of public awareness and education in connection with the healthy and safe usage of all chemicals, including measures aimed at casual users of both pesticides and household chemicals.

- THAT there be a province-wide compendium of fertilizer and limestone usage prepared and, based on its findings, that standards for the protection of groundwater (including, where necessary, the designation of watershed areas within which the use of soil additives is curtailed or eliminated) be developed.

- THAT there be more public education focused on the best use of fertilizers and lime and the problems that unwise usage can create for the environment.

WEEDS:

- THAT the Province of Prince Edward Island conduct an immediate war on weeds through a variety of measures, including the implementation of laws to obliterate any weeds detrimental to the agricultural community; the development of a public awareness campaign on the adverse effects of weeds; the implementation of measures to control weeds on public lands, particularly those owned or leased by the Agricultural Development Corporation; the provision of some incentive or award for praiseworthy efforts in weed control in conjunction with any private sector organization(s) dedicated to beautification objectives; and the encouragement of municipal measures to control weeds in areas within municipal jurisdiction.

SOIL EROSION AND DEGRADATION:

- THAT all Agricultural Development Corporation leases contain provisions regarding soil conservation measures that outline the obligations of landlord and tenant. As a minimum, these leases should clearly specify the crop rotation cycle required of the tenant, the preservation of green belts around streams and other waterways and any areas of the property requiring special land management practices, such as contour ploughing and harvesting, or the establishment, preservation or enhancement of hedgerows.

- THAT all mortgages given to the Agricultural Development Corporation and the Prince Edward Island Lending Authority should contain covenants that spell out appropriate conservation measures and enforcement procedures to ensure these provisions are honoured.

- THAT all funded programs for the agricultural community be reviewed and, where possible, revised so that selective soil conservation practices become tied obligation(s) to specific funded programs. As a starting point, eligibility for crop insurance should depend on suitable crop rotation practices by an applicant and the limestone subsidy should be available only to applicants prepared to enter into an agreement for green belt preservation along waterways.

- THAT the Department of Agriculture, in cooperation with the Agricultural Development Corporation, develop a simple model lease agreement which incorporates basic soil conservation measures and encourage the parties to land rentals to use written leases which could be derived from this model. In addition, the Department of Agriculture and the Agricultural Development Corporation should provide information for both landlords and tenants of farm land on landlord/tenant compensation for land deterioration and for unused benefits arising from long-term tenant investment in the land.

- THAT any special concessions in property taxes relating to the agricultural use of land require landlords to have long-term, written leases with soil conservation provisions in order to qualify for such concessions.

- THAT the Agricultural Development Corporation should examine its inventory of land to determine parcels on which suitable long-term conservation measures would be meaningful and should then determine priorities for accomplishing such measures, so that these parcels could serve as demonstration projects for the agricultural community. Such demonstration projects should be cost-shared by written agreement between tenant and owner with the financial obligations determined by such factors as the term of the lease and the value of such improvements at the end of the term of the tenancy.

- THAT a recognition program should be developed to acknowledge the efforts of farmers who practice good soil conservation methods. Successful recipients should be given signs they could affix to the property that has benefitted from the conservation practices.

- THAT the Agricultural Development Corporation and the Department of Agriculture should develop and promote a land exchange program that would encourage more farmers to trade parcels of land for short-term exchanges in order to facilitate greater crop rotation and otherwise improve land management practices.

- THAT awareness on soil conservation problems should be extended to all members of the public, rather than be isolated as an agricultural issue, and that this goal be accomplished through a variety of means, including: the preparation of a brochure on soil erosion for all property owners, which should be included in annual property tax bills; the distribution of the model lease agreement to all property owners who own more than 5 acres of land; the encouragement of local media participation in bringing this issue to the attention of the public.

PROPERTY TAX:

- THAT the Department of Finance review the present property tax regime with particular regard to identifying the various effects of adopting a revenue-neutral alteration in the commercial tax levy so that a single provincial-municipal rate is adopted on a province-wide basis with redistribution of the municipal portion of the tax among municipalities in accordance with population proportions; and that the findings of such a review be subject to public discussion before changes are implemented.

- THAT the province retain Section 5 of the *Real Property Tax Act* and, in the event that the provisions of Section 5 are successfully invalidated through legal proceedings, then the province move to replace any lost revenues through the introduction of an alternative form of taxation.

- THAT the special considerations now granted farm property and *bona fide* farmers under the provisions of the *Real Property Assessment Act* and the *Real Property Tax Act* be granted only where the taxpayer has filed with the province a statutory declaration as to the taxpayer's eligibility for such special considerations and the taxpayer's compliance with the provisions of the *Lands Protection Act*; and

- THAT land use policies for the long-term preservation of farmland for agricultural use should be linked to these taxation measures.

- THAT the Department of Finance follow the provisions of the *Real Property Tax Act* in respect to the sale of land in satisfaction of overdue property taxes, that such sales not be halted simply because of legal defects in title and that the *Real Property Tax Act* be amended to clarify that the *bona fide* purchaser at a tax sale acquires title from the Crown and not the title of the defaulting taxpayer.

SIGNAGE:

- THAT the Province examine its traffic signage at its entry points with the objective of attempting to reduce, wherever possible, the signage impact now existing in these areas.

- THAT government review its directional signage in the Province and, in particular, that distance information be provided on directional signs as these are being repaired or replaced; that research be conducted to find a safe and effective way to provide route numbers on utility poles with the results being used to increase route signage, particularly on rural, non-arterial roads; that directional signs indicating distant major centre(s) include more of the towns and villages located on that route; that directional signs, particularly those marking communities, be reviewed for appearances and, where necessary, be repainted or otherwise improved in appearance and/or positioning; and that more rivers, streams and rural roads be signed with small markers.

- THAT the Province clarify the area over which it retains jurisdiction for signage control and amend its legislation to reflect a consistent position.

- THAT the Highway Advertisements Regulations be amended to exempt from licensing requirements small signs that identify heritage sites or convey historical information, family signs that identify householders, signs that indicate field trials, conservation projects or other types of land-oriented demonstrations and signs that announce some form of recognition, award or merit; and that both the public and private sectors encourage more usage of quality signage for these purposes.

- THAT the Highway Advertisements Regulations be reviewed to clarify the relationship between Sections 4 and 4.1 and to identify the rationale for different size and height standards in these provisions and that appropriate amendments to these Regulations be made.

- THAT signs which were of the mobile type and which have now been attached to a permanent base not be licensed in the province and that any signs of this nature now in use be removed through the enforcement process.

- THAT the prohibition with respect to mobile signs be imposed on a province-wide basis.

- THAT the Highway Advertisements Regulations be amended to remove the exemption from licensing now accorded advertisements relating to federal, provincial, municipal or regional school board elections; that licenses for such advertisements be available, without fees, on condition that the applicant(s) be personally responsible for the removal of such signage following the relevant election; and that such provisions be strictly enforced.

- THAT the *Highway Advertisements Act* be amended to provide for the removal of not just the "advertisement" (as now provided in Section 4 of the *Act*) but any structural devices or supports used in connection with the advertisement portion of the signage and that, following such amendment, any enforcement of the legislation that requires removal of an advertisement also include removal of the structure(s) or support(s) used in conjunction with the advertisement.

- THAT the Highway Advertisements Regulations be amended to provide that all signs are licensed on condition that the signs are not to be abandoned or neglected; that revocation of a license for breach of any conditions can take place, at any time, on notice; that the sign must then be repaired or replaced in order to have the license reinstated and that failure to do so can cause removal of the signage in the same way as if the sign was never properly licensed.

- THAT the province encourage real estate firms to take a more responsible position in limiting real estate signs and, in particular, to remove these signs promptly once a property has been sold, to replace signs that are faded or otherwise in poor condition, and to use small directional maps in their weekly bulletins as an alternative to the widespread use of directional signage in rural areas.

- THAT the *Highway Advertisements Act* be amended to establish within the law that the public interest requires that protection be given to rural and urban landscapes; to give legal status to the Highway Information Sign System; to show the goals and objectives of the Highway Information Sign System program (including its aim of providing alternative signage for directional information and not roadside advertising); and to include the rules under which applicants may be refused signage or denied the number of H.I.S.S. signs for which application has been made.

- THAT the Department of Tourism and Parks provide a standard provincial road map in a poster format to each service station operator in the province with the request that the map be displayed in a window location such that it may be examined from the exterior; that the Department encourage local tourist and other commercial organizations to supplement this map program with more local maps or other promotional materials featuring directional information for businesses to operate as an alternative to directional signage for local businesses.

- THAT the province promote greater signage control by providing certain additional minimal standards that would include all municipalities (except Charlottetown and Summerside); that municipalities be able to have signage control greater than these minimal standards; that Charlottetown and Summerside be included within these minimal standards if they have not accepted comparable ones within 24 months; and that the province assist municipalities in the development of model signage control bylaws.

- THAT in addition to current minimal standards, there be a complete prohibition on exterior rate signs and outdoor flashing signs.

- THAT the availability of H.I.S.S. signs as driveway markers be discouraged unless highway safety or locational obscurity render the signage necessary or advisable; and that the H.I.S.S. program be severely curtailed in areas where the density of commercial businesses does not merit the widespread usage of directional/distance information and/or where the number of businesses would result in corridors of H.I.S.S. signs along the roadway.

- THAT the province continue to work with commercial organizations in providing business owners with information on good signage and the importance of signage control.

- THAT the public and private sectors develop more signage with flowers and other natural vegetation.

- THAT the prohibition against placing signs on highway shoulders (particularly of the makeshift "New Potatoes 4-Sale" type) be rigidly enforced.

FIXED LINK:

- THAT, in the event that the Government of Canada proceeds further with a fixed link project, the Province of Prince Edward Island undertake a critical evaluation of its future highway needs to determine not only appropriate compensation for the impact of increased traffic on the province's highway system but also to plan the changes necessary to that system in order to meet these needs.

- THAT, in the event the Government of Canada proceeds further with a fixed link project, the province endeavour to ensure appropriate high quality standards for the maintenance of the link's appearance over a thirty-five year timespan be included in the agreement between the developer and the Government of Canada.

- THAT, in the event the Government of Canada proceeds further with the fixed link project, the province ensure it has the necessary legislative measures in place to regulate dredging spoils in such a fashion that the integrity of the landscape is preserved and the environment is protected.

- THAT, in the event the Government of Canada proceeds further with the fixed link project, the province assume a pro-active role to ensure aesthetic deterioration caused by the pre-construction and construction phases of the project is minimized.

- THAT, in the event the Government of Canada proceeds further with the fixed link project, the province recognize the special needs of the Borden area in relation to its infrastructure, particulary in regard to the establishment of a water supply system, and respond in a positive way to assist the community in meeting these needs.

- THAT, in the event the Government of Canada proceeds further with a fixed link project, both the province and the local governments in the Borden area adopt an intensive, pro-active stance towards land use planning in the area.

- THAT, in the event the Government of Canada proceeds further with a fixed link project, the province provide immediate and extensive land use planning assistance for the Borden and surrounding area, including the professional services of a land use planner and a landscape architect and that these professionals have some expertise in either rural land use planning and/or in mega-project planning.

- THAT, in the event the Government of Canada proceeds further with a fixed link project, the province institute comprehensive contingency planning, closely aligned with its comprehensive land use plan, in order to accentuate the positive aspects of this project and to mitigate the potential negative effects.

Volume

2

PRINCE EDWARD ISLAND

Appendices

Volume 2

Report of the

Royal Commission on the Land

Douglas B. Boylan
Chairman

August, 1990

Prince Edward Island.

ROYAL COMMISSION ON LAND OWNERSHIP, LAND USE AND THE LANDSCAPE.

[Working Title adopted: ROYAL COMMISSION ON THE LAND]

Appointed on 20 October 1988 by Order-in-Council No. EC614/88 pursuant to Sections 1 and 2 of the **Public Inquiries Act** [then R.S.P.E.I. 1974, Cap. P-30, and presently R.S.P.E.I. 1988, Cap P-21], and on the recommendation of the President of the Executive Council.

COMMISSIONERS: Douglas B. Boylan, Chairman, Gail E. Wellner, R. Elmer MacDonald, and Hugh M. Robbins.

RESEARCH DIRECTOR, AND, LEGAL COUNSEL: Marlene R. Clark

SECRETARY TO THE COMMISSION: Cheryl Stead

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PRINCE EDWARD ISLAND

APPENDICES

VOLUME 2 OF THE REPORT OF THE ROYAL COMMISSION ON THE LAND

DOUGLAS B. BOYLAN
CHAIRMAN

GAIL E. WELLNER
R. ELMER MACDONALD
HUGH M. ROBBINS
COMMISSIONERS

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Prince Edward Island

Royal Commission on the Land

Volume 2, Appendices

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APPENDIX A

FINAL REPORT OF THE INSTITUTE OF ISLAND STUDIES

FOCUS ON THE LAND
PREPARING FOR THE ROYAL COMMISSION

REPORT SUBMITTED
APRIL 10, 1989
CHARLOTTETOWN
PRINCE EDWARD ISLAND

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PROJECT ADVISOR'S REPORT

I. Introduction

On January 17, 1989, in response to a request from the Chairman of the Royal Commission on the Land, the Institute of Island Studies submitted a proposal for a series of educational and information meetings in advance of the Commission hearings. The purpose of the meetings would be:

1) to stimulate greater public awareness of the issues to be addressed by the Royal Commission

2) to inform the public about the mandate and timetable of the Royal Commission

3) to provide information and assistance to organizations who would be preparing submissions to the Royal Commission

4) to inform the Royal Commission of the public's perception of the Commission, its role and the issues.

The Institute's proposal was accepted by the Royal Commission. A period extending from mid-February through mid-March was established for the conduct of the exercise. The project proceeded under the title of "FOCUS ON THE LAND - Preparing for the Royal Commission". The process was designed to provide background information and to stimulate the discussion of issues; it was not designed to influence public opinion.

II. Structure of the Project

The project was staffed by a Co-ordinator (Catherine Edward), and Advisor (John McClellan) and an Assistant (Anna MacDonald). The services of Ken Shelton and Associates were retained for the production of printed and audio/visual materials.

The Director and Chairman of the Institute of Island Studies provided valuable advice and assistance to the project.

To provide an information base for the meetings, a package of materials and displays was developed. These included:

1) A "Fact Sheet" outlining the "FOCUS ON THE LAND" theme. Statistics derived from official sources were used to compile graphic illustrations of land use and economic trends over the past 15 years. In addition, the fact sheet outlined the mandate of the Royal Commission and cited relevant pieces of legislation. The fact sheet was designed as a device that could be used by interest groups throughout the period of the Commission hearings, not just during the "FOCUS ON THE LAND" stage.

2) A large free standing display and three large maps were designed as visual displays to be used at public meetings. These illustrated some of the issues that the Royal Commission would be addressing. In addition to their use during the "FOCUS ON THE LAND" series, the displays were designed for subsequent use by the Royal Commission at its public hearings.

3) A slide presentation was developed for use at public and private meetings. The presentation, consisting of 140 slides and an accompanying script, focused upon changes that have occurred since the report of the earlier Royal Commission in 1973 and upon the major issues to be examined by the present Commission. At the conclusion of the FOCUS ON THE LAND meetings the slide presentation was recorded as a video tape, to remain as a continuing information tool.

The project was structured as a series of public meetings and private meetings with interest groups scheduled over a fourweek period. In addition, efforts were made to meet with as many students as possible, through sessions presented to senior high school and university students. In all, a total of 40 meetings were held. The details of these meetings are outlined in this report beginning on page 10.

The format used at each of the meetings was similar. Fact sheets were distributed and analyzed. The slide presentation was used to focus on the issues. Discussion of the issues followed.

III. Response to the Program

Four types of meetings were scheduled under the program. These were:

1) **Four public meetings held in major centres**

These meetings, held in Summerside, Charlottetown, Elmsdale and Montague, were designed to attract the general public across the Province. They were well advertised in the media and considerable advance publicity was given to them.

2) **Smaller community meetings**

These were meetings scheduled for smaller communities such as Malpeque, Morell, St. Peters, North Rustico, Souris, Tignish and Wellington. Notice of these meetings was given through posters, radio public service announcements and personal contact with leaders within the community.

3) **Meetings with interest groups and organizations**

A variety of groups and organizations were contacted or in some cases, contacted the Project Co-ordinator. Farm organizations, women's groups and even the caucus of a provincial political party were included in this group.

4) **Meetings with students**

Sessions were held for senior high school students, as well as several sessions for university students.

There were major differences in the response the program received from each of the audiences targeted above.

Public Meetings

The public response to the meetings in major centres was disappointing. Turnouts were low, in no case exceeding 20 persons (excluding those associated with either the Focus on the Land or the Royal Commission). Given the publicity attending the meetings through the media, together with paid advertisements, it is hard to understand the response. The following points may shed some light upon the issue:

1) There appears to be no major issue which has attracted public attention within the mandate of the Royal Commission. The spark among the public that was present in the meetings of the Royal Commission of 1972 and the subsequent hearings of the Land Use Commission in 1975 was not in evidence at any of the "Focus on the Land" meetings. The necessity for land use planning is now generally accepted and, with few exceptions, there is no strong dissatisfaction with existing government policies.

2) The purpose of the "Focus on the Land" meetings was not clearly understood. The concept of a preliminary round of meetings in advance of the Commission hearings was novel, and clearly not one that struck a responsive chord with the general public.

3) It is clear that it is easier for the public to focus upon a single issue than upon a group of related issues. The fixed link or the abortion issue are emotional issues that deeply involve Islanders; the same cannot be said for the issues before the Royal Commission. A strong public reaction can be expected only if the Royal Commission proposes some drastic solutions in an interim or final report.

4) There is a possibility that as the province has become more urbanized interest in land issues has declined. The Royal Commission's mandate is seen as focusing upon rural areas.

Many Islanders retain a nostalgic rural view of the province; in reality, since 1973, the province has become increasingly urban in its occupational structure and lifestyle.

Community Meetings

With the notable exception of the Community of Malpeque, where the information session was combined with the annual meeting, community response was even poorer than at the larger public meetings. In two cases no members of the public appeared; in two other cases attendance consisted of only two persons. The failure of anyone to appear at the Morell-St. Peters meeting, in view of the Greenwich controversy, is truly puzzling. In the community meetings, posters and contact with community leaders were used as the main source of advertising. This may have been a contributing factor.

Meetings with Interest Groups and Organizations

The "Focus on the Land" program was presented to 15 groups and organizations. These sessions were far more productive than public meetings. Organizations have clear-cut concerns and were able to relate to specific issues within the Royal Commission's mandate. In most cases, discussion of the issues was fruitful. In retrospect, greater emphasis should have been placed on this aspect of the program, rather than on the general public or school groups.

Meetings with Students

Sessions were provided for a variety of students in secondary schools and the university. Sessions were arranged at the instigation of the teacher or instructor. Responses were varied. Greater interest was shown by students from rural areas, as opposed to those from an urban background, reinforcing the idea advanced earlier that land issues are divorced from the realities of urban life in the province.

In most of the high schools the fact of continuing outmigration from the province was clearly apparent. A majority of students anticipate that they will leave the province to find employment. Consequently their interest in land use issues is limited.

It was apparent that most students had little background in land-related issues, such as population growth, soil capabilities, economics of land use, etc. If a body of citizens knowledgeable on land use issues is to be developed, it is clear that changes are needed within the school system.

IV. Other Relevant Issues

The sixth item on the Royal Commission's mandate is to inquire into and report on any matter or subject which the Commissioners may feel to be relevant to the subject of the inquiry.

As a result of discussions during group sessions several areas have been identified which do not fall within the specific terms of reference of the Royal Commission but which may merit consideration by the Commission.

1) **Native land claims.**

The Lennox Island Band Council raised the issue of native land claims, an area that the province appears to have ignored. This is an issue raised by the Council before the Land Use Commission in 1975; despite the recommendations by the Commission at that time, nothing has transpired in the interval. In view of developments elsewhere in the area of aboriginal rights, this is an area that the Royal Commission may wish to consider.

2) **Sustainable agriculture.**

The point was made on numerous occasions that an emphasis on preserving agricultural land or restricting non-resident ownership is not enough. Quality of the land that is preserved must also be taken into consideration. Soil erosion, pesticide use and misuse, and other means to develop a sustainable agriculture must be considered.

3) **Land use and environment.**

The issue of environmental quality was raised repeatedly throughout the sessions. A concern for dealing with environmental problems was evident. How this was to be related to the mandate of the Royal Commission is less clear. There is little awareness among the public that the province has adopted a Provincial Conservation Strategy. There is an expectation that the Royal Commission will be dealing with a broad range of environmental issues; in most cases no distinction is made between environmental and land use issues.

4) **Disposition of railway lands.**

With the abandonment of rail service in the province, the disposition of railway lands becomes an issue. Whether the land is to be retained for public use or to be returned to adjoining landowners is a matter of concern to many.

SESSION NOTES

Following are the notes from most of the FOCUS ON THE LAND meetings held, including the Public Meetings and the community and group sessions. The notes indicate the number of persons who attended each session; give a list of the topics discussed; then add some details on each of those topics. The material is presented simply, to reflect the character and feelings of each session. Every attempt was made to be as accurate as possible in recording comments, in order for the Commission to get a sense of the concerns and will of the people from these session reports. Several sessions have not been included. Nobody turned up for the meetings in Evangeline and in Morell/St. Peters. A couple of the others were severely restricted by time and there was no opportunity for discussion.

The high school sessions follow a brief format because the discussion was very limited.

February 22

SUMMERSIDE
Three Oaks High School

10:30 a.m.: 50 students in grade 12 history/economics classes.
2:15 p.m.: 40 students in grade 12 history/political science

The students in these classes had little background in or understanding of the issues. They expressed few opinions. Their strongest motivation was to get off the Island as quickly as possible..to join the fast night life and shopping the big city has to offer. They referred to the Island as "boring" and "backward". They saw no reason why there should be any limit on ownership, non-resident ownership or restrictions on development. 95% of these students are planning on settling elsewhere and therefore had little interest in a Royal Commission on the Land. They had no idea what a Royal Commission did. Clearly this was not their cup of tea.

Two students did show concern. One spoke of concern for the environment, non-resident ownership and uncontrolled development. Another, though silent, was interested enough that he returned for the evening Public Meeting.

There was very limited participation during the sessions. But a number of students reported on their evaluation forms that the program was worthwhile.

SUMMERSIDE THREE OAKS
8:00 p.m. PUBLIC MEETING

(Weather: rain, freezing rain, snow...mentioned as in this case it no doubt was a factor affecting attendance.)

20 present including two newspaper and one radio reporter, a lawyer, a consultant for the Cavendish Planning Board, a farmer, two members of the Royal Commission, one student and others.

The main points covered during discussion:

- non-resident ownership and taxation
- zoning
- planning
- highways

Non-Resident Ownership and Taxation

What is the definition of a "non-resident"? Answer: Someone who does not live on the Island for 6 months of the year.

Is this fair? "Once an Islander always an Islander".

Concern about the inequality of double taxation was expressed. The farmer present explained that he has been left with the burden of double taxation for land he rents from non-residents. Is that fair? The idea of "fairness" was central to the discussion of double taxation. A lawyer expressed the view that double taxation is "offensive to a Canadian", contrary to the mobility clause of the Charter of Rights.

He wondered if it would be possible to get the $500, deposited before an application for ownership is considered, refunded when fulltime residency is established? (This now happens.) He feels applications are redundant - considering 99% are approved. Some properties have been changing hands in families to avoid double taxation.

It was strongly suggested that government put in place a simple policy for the purchase of land by non-residents with clearly stated rules.

Concern about unimpeded sale of land to both non-residents and residents was expressed.

Zoning

Zoning was suggested as a way of protecting land for agriculture, forestry, recreation, housing and natural areas. Zoning would insure the right to farm. It would designate residential development to serviced areas protecting ground water supplies as well as preventing conflicts over land use.

Questions about compensating land owners for a loss in development revenue resulting from zoning designations were raised.

It was stated that government must be serious about protecting agricultural land and that land must be identified according to use.

Planning

Planning on PEI is haphazard. Community planning exerts pressures on near-by communities without plans. It was felt that the establishment of regional and provincial plans with a comprehensive view and a uniform set of standards for the Island would be a good solution to the problems that exist now.

Highways

Participants expressed the views that our highways are in a pitiful state of repair; are dangerous to travel; impossible to cross safely if you live on the Trans-Canada; worrisome for drivers of farm vehicles and in general a disgrace and discouragement to our tourists.

Even increasing truck traffic and the difficulty of building roads on the Island add financial burdens to the province. Concern about increased traffic if the fixed link should become a reality was expressed.

How will we cope? What would this mean for communities along the Trans-Canada who are already worried about the amount of traffic one must fight to reach the mailbox?

February 22

P.E.I. COUNCIL OF THE ARTS

Present 4 members of the Council

These members of the Council raised a number of concerns, including:

- development and planning
- highways

- responsibilities of land ownership and use
- attitudes of Islanders and government

Development and Planning

Concern was expressed over the weakness of regulations governing development. One member of the council has been told that "if you press hard enough for development, you'll get it." In the South Rustico area the entire shoreline has been purchased by off-Island developers who have divided the properties into huge subdivisions. There are no apparent plans to provide adequate sewage and other necessary services. It was suggested that the construction of test pits should be required to check the suitability of the land for sewage disposal.

Effective control of development on the Island depends upon strict enforcement of regulations. The construction and subsequent sale of large subdivisions can leave communities facing very serious sewage and water supply problems. As well, industrial development should take place within particular areas, such as industrial parks.

Most communities are run by volunteers and part-time administrators. The enforcement of planning regulation puts a very serious strain on their limited resources. A shortage of community planners and expertise makes this situation even worse. Adjacent communities often find themselves struggling with incompatible development plans.

Developers were criticized for their "quick-buck" attitude. The tourism industry should be encouraged to develop and invest in cottage developments, attractions etc. that are compatible to the Island landscape and life style. Examples of poor or incompatible development include the Space Shuttle in Cavendish, the Enchanted Castle and King Tut's Tomb. Unfortunately the federal government actually endorsed the Shuttle project. The tourism industry does not seem interested in using the expertise of the Council and its many-faceted membership. The Tourism Industry Association of P.E.I. does not have a member from the council on its board.

Council feels that government should appoint an Advisory Committee on Development. In 1981, the council appealed to government, asking that its members be asked for their opinions and recommendations on development. This did not happen.

Highways

Island roads are in a very poor state due to the increasing number of heavy trucks on the roads. Council feels that the construction of a fixed link will not improve the tourist industry; rather, it will contribute to the deterioration of the highways, and result in an overall decrease in tourism spending. The construction of a fixed link will tend to attract the "daytrip" tourist to the Island.

Land Ownership and Use

Council feels that there is a great need for a change in attitude about the land, its ownership and use. We are only tenants of the land, preserving it for future generations.

Farmers must be encouraged to use good farming practices such as the use of hedgerows, effective crop-rotation and proper cultivating techniques to reduce soil erosion and degradation.

The education system does very little to teach Island children about the land they live on, its value to their past, present and future. This must change.

February 23

VOLUNTARY RESOURCE COUNCIL
COOPER INSTITUTE

5 present

Issues covered during discussion included:

- zoning and planning
- social/psychological problems and education
- rural housing
- Royal Commission mandate
- focus on the land process

Zoning and Planning

The discussion focused on the need for protecting agricultural land. Sustainability must be included as the heart of a long term agricultural land use plan. Farmers must be encouraged and helped to farm in an environmentally sound way while being ensured a fair price for their products.

The Royal Commission should make a link between land use/ land ownership and land practices.

Social/Psychological Problems and Education

The fact was stressed that we have to identify and understand social/psychological problems to achieve new goals. In order to move ahead on the issues the Royal Commission is wrestling with, the people must undergo a change of mind and heart. Through education people will come to understand the consequences of change and the decisions affecting change. We need to be well informed about legislation, policy etc. "Laws are meant to change our minds and hearts" said one person, citing the example of laws pertaining to littering and smoking as examples of change that has been accepted through education.

Because education is the fulcrum for change, it was suggested that there be an Institute given the task of keeping issues "in front of the people"...public education on a continuing basis.

Rural Housing

It was suggested that there has to be interdepartmental involvement in land use policy. For instance: farmers need to be insured the right to farm - with the corollary that rural housing needs a place in the plan while being accommodating of agriculture. To avoid conflict in this situation there must be interdepartmental cooperation. There is room for some creativity in the planning of rural communities - so that strip development can be avoided and so that building will not take place in rural areas where groundwater pollution is a potential problem.

Royal Commission Mandate

The Royal Commission should study problems relating to:

(1) the disposal of solid wastes

(2) the disposal of hazardous chemicals

(3) a recycling system for PEI

(4) the preservation of the Island shoreline "to end the thoughtless removal of sand from our beaches"

The Focus on the Land

The presentation received high praise. It was felt to be a very valuable process with much useful information given. "This is the best thing I've seen in awhile!"

February 27

WOMEN'S GROUPS

3 Present

Main issues discussed:

- rural housing
- non-resident ownership
- sustainable agriculture
- education
- women's perspective
- fixed link
- Royal Commission

Rural Housing

Rural housing is overtaking prime farmland, as are cottage subdivisions, industrial plants and other facilities such as tourist attractions. Conflicts develop between rural dwellers and intensive livestock producers. How can this be resolved?

Non-Resident Ownership

The sale of prime farm land to non-resident owners continues, despite the attempts of government to restrict the amount of land that can be owned by individuals and corporations. Some non-resident owners buy the land for speculative purposes. This land it left idle. Should the regulations be stronger?

Sustainable Agriculture

Farming is a way of life on the Island. Recent trends in agricultural methods have required high inputs from the farmer reducing net returns and often resulting in soil degradation. Sustainable methods that will insure an ongoing industry and a decent farm life-style must be supported.

Education

Education at all levels - for the young, for adults and especially for those who set policy is critical to overcome the "big is beautiful" philosophy.

Women's Perspective

Women have a great attachment to the land. They see the future of their children tied to the land and its quality. Women tend to consider the long-term effects of human actions on the land, while men tend to see the land more in economic terms. What will be left of PEI for our children? An Island with a beautiful landscape and an enviable quality of life or a Coney Island with little economic, social and cultural meaning to future generations?

Fixed Link

Opposition to the fixed link was expressed. There is concern about the Island's highway system. What will happen when the fixed link brings even more traffic to the Island and its unstable highway system? What will be the impact of the fixed link on our "Islandness." Can such a major change be made to P.E.I. without affecting our way of life, norms and values? They felt that the fixed link would result in serious changes that would not necessarily benefit Islanders.

Royal Commission

There was cynicism expressed over the Commission. The last Royal Commission made little difference in government policy. Will the government listen to, and act on, the recommendations of this new Royal Commission?

Monday, February 27

ENVIRONMENTAL GROUPS
& ALAN BUCHANAN'S PEI POLITICAL POLICY CLASS
ROBERTSON LIBRARY 7:00 p.m.

Approximately 55 persons present

Issues covered during discussion included:

- taxation
- land ownership
- zoning - Greenwich
- shoreline erosion
- Royal Commission mandate

During this session there were more questions raised than opinions offered. The questions raised anticipated a response from John McClellan, based on his years of experience with the LUC and his knowledge of the workings of government.

Taxation

Have you ever heard of a taxation system based on a user "minimum maintenance" assessment?

Land Ownership

Why are there so many restrictions on non-resident ownership of land in PEI?

Where should we allow non-resident purchases of cottage property in order to protect land for agriculture, forestry, natural areas, etc.?

How does PEI compare to other provinces...
- in terms of regulating land ownership? - in terms of regulating land use?

Will PEI become a luxury spot...a place for wealthy people from away to enjoy, as land prices rise above those that locals can afford? Could this loss of our own place affect the way we think about ourselves, our culture, our sense of worth, our sense of "Island"? Will we become resident peasants seeing to the needs of the absentee landowners?

Is it possible that the government could require, by law, the building of a cottage on a purchased lot within a specified time to prevent speculation? (suggested by '73 Royal Commission).

"Once an Islander always an Islander!" Why can't I move away to find employment and maintain my status as an Islander and own land as such. PEI is still "home". Maybe we need citizenship?

Which non-residents are we afraid of? Americans? Japanese? Hong Kong Chinese? Displaced Islanders? Who?

There was discussion about the right of the individual property owner to use his/her land as a commodity. Where does the communal right over land enter the picture? Is land a commodity in the ordinary sense...or is there something fundamentally different about land because it is life supporting and therefore distinct from other commodities? Is this why "stewardship" becomes the focus for land use and land ownership?

Zoning

If stewardship is at the heart of land use and land ownership, why are we not zoning our land to protect it for agriculture, forestry, natural areas, housing etc.?

Zoning affects land value. This is a case of society altering land value artificially.

Greenwich

Discussion covered the issue from both poles - from "government must do something to save Greenwich as a natural area" to "the community has been abandoned and is going down the drain because of the loss of the development". There was some discussion about LDC purchasing farms in the area. There was the perception that farmers had been put out of business, rather than any knowledge of LDC helping out at a time when there was an inevitable need to sell.

Shoreline Erosion

Shoreline erosion was discussed in terms of its effect on cottage development and natural areas. If sand is a dynamic resource - how do you put a boundary around a moving, transient system? How can you protect a natural area that is on the move?

Royal Commission Mandate

How seriously will the Royal Commission be taken?

Is the climate better now for this discussion?

Will increasing pressures on the land insure the Royal Commission will have some bite? (fixed link, non-resident ownership etc.)

Will Royal Commission study the effectiveness of the Land Use Commission? Is it effective or too costly? Why is it involved in shopping mall development? Why are lawyers needed when they increase the time and cost of the proceedings?

Will the Royal Commission look into the abandoned railways...shouldn't this be included in the mandate? There is the possibility for excellent and creative use of the railways as hiking and biking trails which will be more and more appreciated as time goes by.

February 27

NATIONAL FARMERS UNION
RESEARCH STATION 9:00 p.m.

10 present

"At least we can talk about the land now." Urban Laughlin on the climate for discussion of land issues on PEI in '89.

Issues covered during discussion included:

- taxation
- zoning
- landscape
- non-resident ownership

Taxation

The concept of zoning as a better deterrent to non-resident ownership was discussed. Recognition of increased pressures on the land is accepted in this group as reality particularly pressures from the affluent eastern seaboard of the USA and probably money from Hong Kong before 1997. The particular concern is that agricultural land be protected from sale to non-resident owners, who take it out of production.

ZONING

Although zoning at the community level is seen as a step in the right direction, it is thought to be less effective than a provincial zoning plan would be.

The NFU proposes zoning agricultural land "in perpetuity" a concept they have been struggling to achieve for 15 years. This zoning commitment would insure the "right to farm".

"Do we really feel agriculture is the backbone of the Island economy of not?"

"When are we going to have the [sic] political will to make the decisions that have to be made?

Landscape

Concern was expressed over the lack of emphasis in promoting tourist development that includes an understanding of the natural beauty of the Island. Frustration was evident in the suggestion that we have made little progress since 1973. "Are we gaining any ground?!" It was pointed out how agricultural land in Wilmot was saved from an interpretative centre for tourists.

Non-Resident Ownership

Without any rules for the game it was expressed that there is confusion over the issue of non-resident ownership. Who are we worried about? How can the issue be resolved? Who don't we want buying land? Where?

March 1

UPEI FACULTY AND STUDENTS
DUFFY 2:00 p.m.

3 present

The discussion in this group (1 student, 2 faculty) centered on agriculture. Points raised included:

Agricultural land in Prince Edward Island must be preserved and it must be preserved in a healthy state, with legislation to insure it's healthfulness. (weed control, raising of sheep on uncropped land etc.)

Because PEI is densely populated it should therefore be subject to strict regulation to preserve the land.

"Agro service rings" should be considered as an aid to farming.

The Royal Commission should look at the use of agricultural herbicides and pesticides and consider their effect on the environment.

The marriage of tourism and agriculture was discussed. Agriculture is an industry in decline while tourism is in a period of growth. They could be combined in an effort of "care" towards the landscape (i.e. farm vacations). This marriage of industries should be a cooperative venture of stewardship and education.

What should/can government do to compel a farmer to maintain the landscape?

The lack of interest in land issues was discussed. It appears not be of critical concern to either students or faculty. Or everyone is short of time.

March 1

CHARLOTTETOWN
8:00 PUBLIC MEETING
FARM CENTRE

30 present including the Royal Commission

This meeting was the most unreceptive and silent of all the sessions. Issues addressed during "discussion" included:

- regulations
- zoning
- community plans
- landscape
- cottage lot sub-divisions

Regulations

Regulations are loathed. However, as someone said, "With changing pressures on the land we are faced with the reality of regulations being the lesser of the evils."

One person said that for the peaceful coexistence of a whole variety of lifestyles we did not have in 1973 there must be new and stronger regulation.

Zoning

Will PEI look at the British Columbia model of agricultural land reserves?

Where can land be reserved for agriculture?

Do you limit farm size?

Will retiring farmers be compensated for income lost due to zoning at the time of sale?

Will strip development be continued to be allowed on farmland?

How will the Commission deal with issues like farm odors and drifting of farm sprays to nearby housing?

How can we effectively limit the amount of land owned by corporations such as Cavendish Farms? Legislation.

Community Plans

Why does such a large area as eastern Kings have a plan and how was it developed?

The opinion was expressed that every community should have a plan.

Landscape

Will the Royal Commission study the aesthetic value of the landscape?

An architect said that it is time we considered the visual character of the Island of importance, including our architectural heritage. New growth and development should be considered with this in mind. Perhaps there could be architectural prototypes developed as alternatives to the boxes that are now so common. A lot could be done to make designs available. How do you regulate aesthetics? You "encourage" through education.

Cottage Lot Subdivision

Have there been any studies done on the number of cottages actually built on existing subdivisions?

How will the Royal Commission deal with speculation?

How do you force people to build? (raise taxes?) It was suggested that one should consider the consequences of legislation....the results may be unexpected! (unfinished foundations, shacks etc.)

Royal Commission

How does one present a brief to the Royal Commission?

How formal will the process be?

What kind of documentation will be necessary?

(Doug Boylan indicated that the Commission needs DIRECTION. The litany of problems are easily identified. Therefore it would appreciate receiving written Briefs before the Hearings in order to be best prepared to respond.)

March 2

NORTH RUSTICO LIONS CLUB
SPONSORED BY THE CAVENDISH AREA PLANNING BOARD

2 present - no representation from the Planning Board

Main issues discussed:

- Non-resident property taxes
- regulation of non-resident ownership
- planning process
- communities vs rural areas.

Non-Resident Property Taxes

The provincial government's system of taxing non-resident property owners is seen as very unfair. A person with very strong Island roots said that the tax system is wrong because "it is shaping the minds of residents in a negative manner and is engendering discrimination against non-residents".

Control of Non-Resident Ownership

Fears were expressed that a large percentage of Islanders will become tenants in their own home if the strong trend of selling Island property to non-resident owners continues unchecked. Of particular concern is the sale of farmland to non-residents who may choose to take it out of production. On the other hand farmers want to sell their property for a good price, even to a developer, taking good farmland out of production. Should the government place controls on the sale of prime farm property?

Planning Process

The planning process has not worked for rural P.E.I. A number of rural communities have tried the traditional approach which includes the involvement of residents in the preparation of a plan, but the plans often turn out to be creatures of the community councils alone.

In the late 1970's, community officials in North Rustico were talking about a plan for the North Shore area but the idea seems to have died.

In the Cavendish area, there was a fair amount of interest expressed at first in the planning process. The Cavendish Area Planning Board presented the concept of a plan to the community, and is now refining it.

The second round of meetings is expected to start soon. Under the new Planning Act, development control is in the hands of the provincial cabinet, and the planning board has no official function.

The Cavendish Board is looking at other options such as setting up an authority or utility and hopefully a non-profit development corporation. This is being done with an eye to future planning.

Communities vs Rural Build-up

Because of the lower tax rates in rural areas, communities find it difficult to compete for new residents. When a community puts in roads, water and sewage systems, and subdivides property, the lots get very expensive.

"We ought to consider giving villages grants from time to time to extend their services, if we are going to get people into villages." In the middle of North Rustico there is an area that has been subdivided for a long time but because the lots are serviced, they are too expensive for most people to buy.

"There are good things to be said about concentrating people in villages, but there is still a happy rural populace here. The Eastern Kings region has a huge scattered population that comprises an active, caring community where the people look after each other," said one person. This person feels the problem lies in Charlottetown and Summerside areas where there is a temptation to "leapfrog" outside the taxed area. People feel they are getting more benefits for less money. But once these areas get built up, problems such as safe water supply develop. (Also dog control, etc.)

March 3

VILLAGE OF CORNWALL COUNCIL

3 present

Topic discussed included:

- housing and services
- taxes
- strip development
- fixed link
- signage

Housing and Services

Concern was expressed over the building of single family dwellings in unserviced areas. If the council does present a brief to the Royal Commission, this will be one of the main concerns it will address.

Cornwall has spent a considerable sum to install water and sewage systems, but many people build their homes just outside the village boundaries to avoid a higher tax rate. These homes generally have their own septic tanks and wells. When a house is built along the sewer line, the Village Council has no power to insist homeowners hook up to the sewage system if the homeowner is outside the village boundary. Council feels that situations like this defeat its purpose.

People are encouraged to build outside community boundaries because of lower taxes. People who live in built-up areas outside established communities expect the government to help them out when they run into trouble with water and sewage. They use community facilities (such as rinks) without contributing to the cost of building and maintaining them through taxes.

Is government considering restrictions to limit building to approved subdivisions in some areas?

Lots on paved roads in rural areas are cheaper than those in communities that offer sewage, water and road services. These services should be installed in concentrated areas where there is less likelihood of environmental problems and where government can get the most for its money.

Taxes

Communities should be established in such a way that taxes can be kept at a level that will attract people instead of driving them outside the community boundaries. The difference in tax rates for the rural areas and established communities creates problems for communities trying to attract residents.

Strip Development

Strip development creates traffic hazards. When strip developments begin, there are, in fact, subdivisions created. Strip development works against the communities that already exist.

Fixed Link

One person expressed support for the fixed link. "What is the difference between the fixed link and the ferry system? If the fixed link does not go through, the ferry system will have to be improved." The fixed link would be a step forward in transportation on P.E.I., since the cost of operating and maintaining the ferry system is so much higher. Opposition was also expressed. "If the fixed link comes, the main roads on the Island will need a great deal of improvement to handle extra traffic."

Signage

Councillors feel the system we now have is probably "stabilized as much as possible." "The Island's signage program is much better than that in the United States," observed one councillor.

March 3

KENSINGTON INTERMEDIATE SENIOR HIGH
1:30 p.m. SPECIAL SESSION

Due to apparent confusion about our arrival at the school, our starting time was delayed by about 20 minutes. There was considerable racket during the slide show (announcements, jack hammers, buzzers and bells, noise from the gym). However, this group of grade 12 students showed a great deal more interest in the topic than did the students in some other schools...with questions about ownership, the fixed link and the lack of willingness on the part of government to make obvious and important decisions. The discussion was cut off abruptly by a bell when all the students rose and exited.

March 4

FARM ORGANIZATIONS
FARM CENTRE

3 present

Main issues discussed:

- preservation of agricultural lands
- land taxation
- agricultural chemicals

Preservation of Agricultural Lands

The Potato Producers Association is concerned about the amount of prime farmland on the Island that is taken out of agriculture for housing - a terrible waste when marginal land could be used for this purpose.

Zoning is seen as a difficult concept. "But somewhere down the road, that land will be needed if the population of the world continues to grow. In Ontario and the eastern seaboard of the United States, a lot of good farmland has already been used up for houses, roads and other developments. The farmland goes first; at some point, it has to stop," said one farmer.

Yet many farmers feel their good land represents security for their retirement. To them, a piece of land 10 miles east of Charlottetown is as good as an RRSP in the bank. A farmer should be free to sell his land as he sees fit.

Concern was expressed about the amount of farmland that can be owned by a corporation such as Cavendish Farms. If the Potato Producers Association does present a brief, the 3,000 acre limit on the purchase of farmland by corporations will be a key issue. It is hard to make a law to deal with one company, said the producers. "It is hard to see too much land get into the hands of one company." But another farmer noted that Dundas Farms is selling off a lot of its land which could be bought by non-residents.

Land Taxation

Farmers get a good tax rate now but feel there is no guarantee it will continue. If the tax on land not being used for agriculture is reduced, the person holding that property has more incentive to keep it as non-productive or non-farm land, rather than improving it.

Agricultural Chemicals

Those present acknowledged that the public is concerned about aerial spraying. There used to be many complaints. Some people won't rent land to potato farmers because of concerns about sprays. Most farmers are now very careful about their spraying programs.

March 7

LENNOX ISLAND
2:00 p.m.

10 present

This session addressed many questions including:

- native land claims
- tourist development
- signage
- taxation
- laws and regulations

Native Land Claims

In 1972 the Lennox Island Band presented a brief to the LUC requesting a response from government on the issue of unsurrendered land claims. The Micmac people of PEI at no point in their history entered into treaties with Government and therefore have never surrendered their claim to the land. They have been waiting since '72 for a response with none forthcoming. They feel strongly that it is incumbent on the Province to enter into negotiations with the Federal Government on their behalf. This would go a long way to healing wounds. The Band has no intention of uprooting people from their homes to reclaim land but feel compensation is due. They intend to restate their case in a brief to the Royal Commission.

Tourist Development

There has been too many years of concentration on Cavendish as a destination for tourists. The Band feels there is excellent potential for tourist development in Prince County and specifically on Lennox Island. Lennox Island was originally given to the Indian people as a wasteland that nobody wanted but now is ripe for tourist development due to an unexpected appreciation of its haunting natural beauty. If advertising, now focused on the North Shore and Charlottetown, could be broadened to include the ends of the Island, perhaps we would see a change in the patterns of tourist activity on the Island. Also the signage program could be improved to direct tourists east and west.

The Band questions if further proliferation of hunting/fishing lodges is a desirable direction for PEI to go. This is a small place and with so much hunting going on we are all only "a shot gun away...it sounds like a war is going on in the fall and is hardly a safe place to be." Licenses are too cheap. Extra fees should be added to non-resident licenses.

Signage

"Worst in the world and the most dangerous!"

The road is particularly dangerous near Borden at the Charlottetown turn-off. There is inadequate warning about the turn-off and signs are too small for the traffic flow. Although they are not in favour of billboards, the Band feels there could be improvements in the provincial signage program. Many signs are too small for people with vision problems. It is also difficult to give directions since there are no "route signs" for all our roads.

Taxation

Agreement was expressed on double taxation for non-residents.

Laws and Regulations

Although the Band is not overly fond of regulations and would prefer to see people "do the right thing" in a spirit of cooperation, it understands this is impossible and accepts the fact of regulations. Some ares to be regulated:

- scenic areas should be protected...a provincial plan should be implemented requiring participation of landowners
- offshore islands should be protected
- countryside should be protected from strip development
- agriculture should be protected by "right to farm" legislation and farmland zoning
- marshlands should be protected, possibly through voluntary programs with landowners for the protection of wildlife
- groundwater needs to be protected from chemical contamination; there should be a filtering system to insure the flow through estuaries/marshlands is safe

"More laws and more laws! A poor route to go but there is no choice now."

There IS room for encouraging people to accept a cooperative approach for solving environmental and land protection problems through a good, comprehensive and ongoing education/information program reinforcing stewardship as the route for achieving the greatest common good.

March 7

THE FARM CENTRE
P.E.I. WOMEN'S INSTITUTE BOARD OF DIRECTORS

9 present

This meeting was brief but productive. The Board praised the slide presentation and expressed an interest in obtaining a copy for WI use.

Main issues discussed:

- preservation of agricultural land
- natural areas

Preservation of Agricultural Land

Concern was expressed about the encroachment of housing subdivisions on productive farm land. In most cases, the farms were in place before the subdivision was built. A case in point is the MacKinley Farm, a century farm located in North River, now surrounded by a housing subdivision. The larger subdivisions often experience problems with water supply and sewage.

Natural Areas

Has the province considered declaring our offshore islands provincial parks? It was explained that most are privately owned and would have to be bought at high prices. Cottage lots on Boughton Island are listed at $100,000.

What has happened to the land that was to be the site of the Greenwich development?

March 7

TIGNISH AT THE LIBRARY
7:30 p.m.

3 present

With only three persons present it was a very personalized presentation. Appreciation was expressed for the process and as it was a bitingly frigid night and the library was chilly we did not dally.

March 8

ELMSDALE
1:00 p.m. WESTISLE HIGH

Two Classes of approximately 40 students each.

There was the usual expression of the desire to leave the Island, although a higher percentage indicated they plan to settle here eventually - about 25%. The first group had little to say...these were new ideas and they didn't have any questions. The second group had reviewed the fact sheet in class and so had questions about land ownership, double taxation (some agreed and some didn't), the seeming lack of political will to do the obvious - protect farmland, refuse ugly tourist developments etc. The bell rang and once again they were off in haste.

March 8

8:00 p.m.
ELMSDALE PUBLIC MEETING
WESTISLE HIGH

20 present

The questions raised in discussion included:

- double taxation
- Royal Commission's mandate
- Natural Areas
- rural housing
- education

Double Taxation

On shorefront property, double taxation is seen as acceptable. But it is felt to be unfair to displaced Islanders who hold land passed from generation to generation. They should get compensation.

It was also suggested that anyone, resident or non-resident, should get a tax concession for undertaking reforestation of their property.

The suggestion was made that land be taxed according to its usage and according to the care it gets from its owners.

Royal Commission's Mandate

Why aren't questions about the use of agricultural chemicals and the environmental problems resulting from their use addressed as specific issues of the mandate of the Commission? This is a critical question of land use. Are we really serious about land use if we don't focus attention on the chemical abuse of the land? Support for sustainable agriculture was expressed as a solution to the problems of chemical farming. Farmers are concerned. It is costly to farmers to make necessary changes... the public must be willing to pay the farmer a decent price for producing foods with as few chemicals as possible. These concerns were expressed by farmers present.

Will the Commission take submissions from individuals seriously? Do these submissions carry as much weight as those from groups? (Elmer answered that it would depend upon the individual brief...etc.)

Will the question of municipal dumps be raised by the Commission? Shouldn't there be a uniform plan for the Island?

Will questions about the use and care of our rivers and estuaries be addressed by the Royal Commission?

Natural Areas

It was suggested that our natural areas should become considerably larger than they are now.

Is the provincial government buying land for natural areas? What about federal agencies like the Nature Conservancy International agencies?

How many acres of land in our 30 or so offshore islands? How much of PEI is crown land?

Rural Housing

Support was expressed for a provincial plan in order to protect farmland and to discourage conflicts between farming and rural housing. Right to farm legislation is necessary as well as regulations protecting groundwater.

Education

Education is seen as the key to land use/ownership/scape management. People are leary of regulations and therefore these need to be undertaken with care. "Education is the best plan!"

March 9

CONSERVATIVE PARTY CAUCUS

6 present

Areas of discussion:

- regulations
- right to farm
- tourism
- development
- strip development
- Unsightly Properties Act
- Royal Commission

Regulations

Government must be very careful, thoughtful and clear about the regulations and legislation it puts in place. The vague regulations in the current legislation on land use have caused many problems for the governments that must implement them as well as for non-elected bodies such as the P.E.I. Land Use Commission. Land use issues will become even more complex in the future. Governments must be prepared to deal with this in a clear, decisive manner.

The presentation was praised, saying it focused on land issues that must be addressed.

Right to Farm

"As more tourists come to the Island, people's noses get sensitive to the smell of agricultural areas. I believe we'll have to look at protecting the livelihood of our farmers," said one person. This person feels that tourist dollars are important but they come and go. Farming must be a viable part of the Island's future since its pastoral beauty is the biggest attraction we can offer tourists.

Certain areas of the Island may end up zoned as agricultural land. This could result in serious financial losses for some farmers. The general feeling expressed was that if government wants to protect farmland then farmers should be compensated for their losses.

Tourism

Tourism will continue to grow, with new problems that will have to be resolved for the good of the Island as well as the tourists.

If the fixed link comes, the traffic will probably increase, and roads will be placed under even greater stress than they are now. Traffic in the Cavendish area is often lined up for two miles creating problems for residents, particularly for farmers with farm vehicles. Then in the winter Cavendish becomes a ghost town.

Development

One person wondered why permission would be refused if someone wanted to put a building on his property simply because it will spoil the view for others? When he is refused permission to construct a building or develop some of his land there is no compensation offered to him. "This is not fair," said this person.

It was noted by one MLA that St. Peter's Bay lost a great economic opportunity with the decision refusing the development at Greenwich. Yet, it was further pointed out, there are no protests when the Cavendish area wants to expand. Are there two sets of rules for development on P.E.I.? If the Land Use Commission does not listen to the wishes of the people, what is the point of holding hearings?

Will Greenwich be as protected now as it would have been under the project? The environment in Greenwich is "now open to the wolves".

It was noted that the Land Use Commission did not come out to St. Peter's Bay to hold the hearings on the Greenwich case until it was forced to do so. People in Kings County are tired of being governed by rules made in, and implemented from, Charlottetown. It should be suggested to the Royal Commission on the Land that appeal hearings be held in the area where the issue originates.

Strip Development

It was noted that it is simpler and cheaper for a landowner to sell a lot along the road to a person who wants to build a house. In the case of a housing subdivision, the landowner would be responsible for providing sewage, water and road services. Under these conditions, the lots are too expensive and people will not buy them. Is there a solution for this problem? One MLA pointed out the difficulty of getting a building lot permit along the road.

Roads

One MLA asked about development in areas of the province that have clay roads. In some ridings, there are a lot of clay roads that were well-populated at one time, but the people have left. These areas have to be developed, particularly in view of the recent growth in the labor force. People have indicated that they would like to live in these areas, but they have difficulty obtaining permits from government to build houses on clay roads. They are told they would be building at their own risk, and that they may not be able to get paving, snowplowing and electrical services.

Should these roads be paved so communities could be built up, farming increased?

Unsightly Properties Act

The Unsightly Properties Act should be strengthened so that the province can effectively deal with problems such as auto junkyards.

Royal Commission

The feelings was expressed generally that not many people will attend the Royal Commission's hearings because they have lost faith in the system. Will the Royal Commission hearings result in the imposition of more restrictions on rural Islanders? One person expressed the reality that, "for many people here the biggest concern is their bread and butter. There is a heightened awareness of environmental problems, but it depends on what focus you take".

March 10

AGRICULTURE CLASS: BLUEFIELD HIGH SCHOOL

27 students (mixture of academic and general. Grade 11)

These student seemed somewhat knowledgeable about land issues, and were concerned about the future of the Island. Topics discussed included:

- development
- regulations
- land ownership

Development

If the Sherwood Mall (Ellis Brothers) is expanding, why is the Charlottetown Mall being refused permission to expand as well?

Why was permission given for construction of attractions such as the Space Shuttle and Kings Tut's Tomb in the Cavendish area? One student, who is already a budding businessman with 20 approved cottage lots on the North Shore (one has a cottage built on it), said these types of attractions have nothing to do with Prince Edward Island. Why was the proposed Greenwich development rejected? What else can be done with the property?

One student said Greenwich will eventually be developed in one way or another. He recognized that it is an environmentally sensitive area, and added that the developer did plan to keep people out of the marshy areas. The land is "going to heck now, with people driving all over it. And no one is doing anything about it."

What are they trying to do on Boughton Island? A student said that a developer in the United States has purchased a number of small offshore islands and turned them into a "classy" resort. He wondered if that idea would work here.

Regulations

Why do you have to apply for a permit to build a small building on your own property? The student who asked this question felt that it is ridiculous to have to apply to the government to build a garage on his property. The teacher pointed out that if there were no restrictions, we wouldn't know what we would end up with.

Ownership

Why is Cavendish Farms restricted in the amount of land it can own or buy?

If the government wanted to build a new road, could it take my land?

March 13

GRADE 11 AND GRADE 10 GEOGRAPHY CLASSES
COLONEL GRAY SENIOR HIGH SCHOOL

Grade 11 class: 26 students

These students, the majority of whom come from the city area, did not express much interest in land issues or the future of the Island. When asked how many plan to stay on P.E.I. after they graduate, only about one-third of them raised their hands. There were very few questions and there was no discussion.

Issues raised:

- fixed link
- what to do with PEI

Fixed Link

What impact will the fixed link, if it comes, have on P.E.I.? The teacher raised this question, which generated a couple of questions from the students.

Will the fixed link help the environment or hurt it? How do people living in Borden feel about the fixed link? Are people not coming here now to build cottages? What makes you think the fixed link will cause more people who are not residents to buy land and build cottages?

What to do with PEI

When asked what the students would do with P.E.I. if they had their choice, one said he would like to see the unpopulated areas turned into a national park. He feels Islanders respect the land more than tourists and would take better care of it. The rest of the students did not respond to this question.

GRADE 10 CLASS: Approximately 20 students

These students asked more questions and ventured more opinions than those in the Grade 11 class. They seemed more interested in this topic than the previous class.

Issues raised:

- Greenwich
- development

Greenwich

Will the Greenwich development be built? What were the reasons for denying the application? If the Greenwich development was built, would it have resulted in a major increase in tourism?

Development

What is the population of P.E.I. compared to the population of Canada?

One student said she would like to see P.E.I. remain as it is. She does not like the commercialization of P.E.I. "If we could keep the old ways, old look, we could give people another view of the area. We should preserve the beauty we have today. Attractions such as the Space Shuttle and King Tut's Tomb in Cavendish do not fit P.E.I."

Another student said he would like to see bigger malls and a casino on the Island.

Another asked if deer could be brought in, and bred here, for hunting? This could be a type of tourist attraction.

March 13

MONTAGUE HIGH SCHOOL
1:00 p.m.

Present 80 students in rotation

Students appear to be generally disinterested in issues relating to the land. This can make the process rather painful...literally working to "pull" ideas from unwilling suspects. In this session only a few questions were raised:

Why are regulations needed to control non-resident ownership?

What do you think about Greenwich?

Will the fixed link have an effect on tourism?

Will the fixed link cause land prices to increase?

March 13

MONTAGUE PUBLIC MEETING
CURLING RINK 8:00 p.m.

20 present including two reporters

This was among the liveliest sessions held. Most sectors were represented - agriculture, business, tourism, community planning, real estate, politics, academics and general interest. One farmer drove all the way from Borden as he was unable to attend the Summerside meeting. Topics discussed included:

- garbage dumps
- non-resident ownership
- Royal Commission process
- agriculture
- PEI railway
- community plans
- landscape

Garbage Dumps

The issue of garbage disposal should be included in the Royal Commission's mandate. Concerns were expressed about the desperate condition of the dumps and the lack of a provincial plan for uniform dump control. People are worried about percolation from the sites to groundwater supplies. One woman from Dundas is so supportive of the new recycling plan for Montague/ Brudenell/Belfast that she plans to deliver her recycled garbage to Montague in order to participate...and is also encouraging her friends and neighbours to do the same.

Non-Resident Ownership

One non-resident landowner expressed concern about double taxation for people of Island stock now living away and returning home in summer. She wants to make a presentation to the Royal Commission but will not be present during the Hearings. She asked about the acceptance of written briefs submitted by mail. Hugh Robbins indicated such a submission, under the circumstances, would be accepted.

Other people expressed concern about non-resident ownership, particularly about its increase. There was a suggestion made that after 5 years of non-resident ownership land owners should be expected to become permanent residents.

It was also suggested that non-resident ownership of agricultural lands in eastern PEI is causing depressed land values. This unused available land is "used" by neighbouring farmers (for no cost except keeping it up) reducing the need to buy land. Thus, the agricultural land market is depressed artificially. Retiring farmers suffer especially from this devaluation. If no one but a corporation is inclined to buy a farmer's land (at retirement) could that purchase be allowed, even if it means surpassing the 3000 acre limit for corporations? Or should the LDC be assisting in this situation? Is Cavendish Farms considered to be non-resident? Dundas Farms? Henderson Lumber?

It was suggested that all land use planning should now include much stricter controls on ownership. (Citing increased pressure from the Eastern seaboard of the USA and Hong Kong.)

Royal Commission Process

People expressed concern about Royal Commission ad in the paper. They saw it as a discouragement. What it describes is a process bogged down in technicalities...which "turns people off and discourages public participation".

How useful is this process now if very few recommendations from the 72/73 Royal Commission have been implemented?

What kind of educational effort will the Royal Commission recommend? Because there is public resistance to more controls, it was suggested that a learning process must take place to instill attitudes of stewardship in Islanders. Then the necessary controls can be implemented with the support of the people. "Our children need to be educated about the diversity of the Island environment....its wonderful possibilities, the strengths and advantages of living in a physically unspoiled province," said one person.

"Maybe when they have been taught "bird life" they will not pine for "night life" in the big city and more of our young people will stay here...or include returning home as a part of their post-educational/life adventure plan," added another.

Hand in hand with an educational initiative, it was strongly suggested that we must develop the human resources we have here. We must establish the atmosphere for this to happen so that Islanders will own and operate the businesses here rather than work as low paid hirelings.

Our children then will have, both the attitudes that allow them to love this Island and the opportunities that encourage them to stay.

One man present indicated he was disappointed that the room was not packed, particularly with municipal leaders who should be interested in these issues.

Agriculture

PEI's best agricultural land must be "frozen" for agricultural use. (eg Panmure Island) Expressed strongly.

The farmer from Borden indicated that there is no land to be had in Borden. Farmers have been squeezed out by Cavendish Farms which "pulls tricks like billing a farmer who takes standing hay, not for hay - but rather "rent"...thus affecting the 3000 acre ruling on control/ownership." This man has sons working with him, they want to expand but there is no available land.

PEI Railway

There will be a submission made to the RC on a proposal for a PEI Railway.

Community Plans

A representative of the Brudenell Community Committee urged people to design plans for their communities expressing the fact a plan is vital to the future of every community.

Landscape

One person wanted to know how the mess in Mt. Mellick at the Lawton potato warehouse and livestock operation got approval? Has it been approved in its present state? Are clean-up orders pending? This is a serious denigration of landscape quality. "A pock on the landscape!"

Will the study of landscape quality include standards for architectural integrity based on designs sympathetic to the Island landscape itself?

March 14

MORELL AND SOURIS HIGH SCHOOLS
MORELL HIGH SCHOOL

70 students present (Grade 12 & Grade 9 Maritime Studies class)

Only one student had a question. He wondered whether the decisions of the P.E.I. Land Use Commission are final.

SOURIS HIGH SCHOOL

First session: 40 students
Second session: 70 students

As in Morell High School, there were very few questions raised by the students. However, the discussion period in the first group was very short, and there was no time at all for questions in the second. When the first class was asked how many plan to remain on P.E.I., most raised their hands, in contrast to some of the other schools visited.

One student in the first class had a few questions: What is the point of the meeting? Who makes the final decision on the Royal Commission's report? What was the decision on the Greenwich case? Why was it denied?

March 16

CHARLOTTETOWN RURAL

Present 250-300 students in two sessions. These were a mixture of grades and classes.

The students in the first session did not have any questions.

Only one in the second group asked a question.

Is the price of real estate on P.E.I. going to increase or decrease, and will the value of property increase more in the city or in the country?

Interestingly, most of the students in the first session indicated they plan to stay on P.E.I. when they graduate, while most of the second group planned to leave the province. This was probably the worst day possible for the session, since it was the last day of classes before March break.

March 14

EASTERN KINGS ADVISORY BOARD AND THE COMMUNITY OF SOURIS AT SOURIS HIGH SCHOOL

12 present

Concerns discussed included:

- provincial centralization
- zoning
- community plans
- non-resident ownership
- Royal Commission mandate

Centralization

Concern was expressed about the centralization of the control of Eastern Kings in Charlottetown. Although it was also suggested that it is the province's responsibility to decide what uses can be permitted in what areas of the province.

Zoning/Community Plans

The establishment of a provincial zoning system was discussed. Should such a system be established on a province-wide basis or by individual communities? It was suggested that communities should be encouraged to develop official plans, but noted that many communities will not do so for a very long time.

Do communities have to make the first move in the development of official plans? (yes) "If the government has no fear of telling people what taxes they must pay, why can't the government tell the communities to create official plans?" asked one person.

Reservations were expressed about legislation for establishing a provincial zoning system. The power for such a system would be held in Charlottetown. If wrong decisions regarding Eastern Kings are made in Charlottetown, what recourse would people from the area have? "The present system is by no means satisfactory, but a central body, with its political base in Charlottetown, would not be in our best interest," said one resident.

Perhaps a regional approach would be the best one to take toward community development. Decisions affecting the people would be made by the people in that community. A regional zoning system would be more flexible than an overall provincial system.

It was suggested that the provincial government could give the communities a certain time period to develop official plans, and if the plans are not completed within that time, the province could step in and complete the process. "If people do not do their own planning, developers like Burt Hayman will do it for them. Many people view Charlottetown as "evil" but foreign ownership is worse."

Questions were raised about the nature of communities: How much power do municipalities have? What does a community have to do to get an incorporated plan? How is a community formed? Who can form a community? What process must a community go through to extend its boundaries?

Non-Resident Ownership

A question was raised about the limits government can impose on a person's rights. "If a person pays for land, he owns it. How can the government tell him what he can and cannot do with it?" However, several people at the meeting said a person does not actually own the land but just acquires the right to use it.

Royal Commission's Mandate

To what extent will the Royal Commission consider issues related to land planning standards? It seems unclear if this is included in the mandate or not.

What impact will the fixed link have on the Royal Commission?

What will happen to provincially-owned land...should the government do anything with this land before the Royal Commission makes its recommendations?

Will the Commission pinpoint certain areas regarding land use?

Will the Commission raise environmental concerns or simply address them as they are raised in submissions?

Will the Royal Commission make recommendations to the provincial government on the way the Land Use Commission operates?

Wed., March 15

PEI TOURISM ASSOCIATION BOARD OF DIRECTORS
7:00 P.M. CHARLOTTETOWN HOTEL

18 members present

This meeting of the PEI Tourism Association was arranged specifically for the FOCUS ON THE LAND presentation. It was not part of a regular Board meeting.

The group will present a formal brief to the Royal Commission.

At the outset, the Chairman pointed out that in a recent private study done by Monica Driscoll, the percentage of land owned by non-residents was determined to be 9.5%, not 11% as indicated on the fact sheet. This may be due to confusion about whether one considers Cavendish Farms, Henderson Lumber and Dundas Farms resident or non-resident owners.

Areas of discussion included:

- non-resident ownership
- zoning
- the philosophy of the Royal Commission
- Tourism 2000
- FOCUS ON THE LAND

Non-Resident Ownership

The association was interested in knowing the percentage of non-residents with Island connections. There was a question raised about who the non-resident landowners holding the bulk of the non-resident owned land were.

Does the Royal Commission want to hear what the Association thinks of double taxation?

Zoning

Zoning is seen as the "hot potato". Farmers are in favour of agricultural zoning as long as they are farming but the minute they want to retire they want the right to sell to any developer offering the highest price. This will be a political tightwalk.

Philosophy of the Royal Commission

There was discussion about this Royal Commission - its character, philosophy.

Is it seriously intending to approach recommendations logically or is this exercise a cataloguing of public opinion?

Will recommendations become policy or will they sit untouched like the '73 Royal Commission's?

Focus on the Land

Appreciation was expressed for the FOCUS ON THE LAND project, seen to be a worthwhile expension of energy.

Tourism 2000

The Board is presently completing a major study of tourism in PEI looking to the future an anticipating the coming of the fixed link with a plan, "Tourism 2000". This has taken much time and leaves the Board little time to prepare a brief to the Royal Commission. They will do that, however, and hope to get an agreeable time to make their presentation to the Commission.

March 16

MALPEQUE COMMUNITY COUNCIL
Annual Meeting

25 present

Following the annual meeting we began our presentation at 10:30 p.m. In spite of the time, many questions were raised about:

- Bert Hayman
- building permits
- Dilapidated Properties Act
- community plans
- non-resident ownership
- S.I.N.

Bert Hayman

Considerable discussion revolved around Mr. Hayman and his operation "Soloman Co." How much does Mr. Hayman own? Are there restrictions on what he can do? etc. etc. as well as comments about the mentionable profit he turns on speculative sales. Mistrust was expressed. It was suggested his progress be restricted. One person commented everyone is too hard on Mr. Hayman.

BUILDING PERMITS

One person wanted to know why the government is "so nosy" and demands building permits. The addition of building permit fees is a sore point and the group passed a motion to request that the government rescind legislation re building permit fees.

Dilapidated Properties Act

This was described as a "miserable thing" which recently took advantage of a local resident by increasing the severity of his illness due to excessive worry about a court order to clean up his car body junk yard. "Before the province harasses the people why doesn't it take a look at the roads!!! Now that's dilapidation!"

Community Plans

If we design a community plan will we be required to invest in a sewage system?

Non-Resident Ownership

Concern was expressed over increasing pressures from non-resident ownership of the land. How does the government plan to control growth in non-resident land purchases as pressures increases from American and Hong Kong land seekers?

What is a legitimate reason for denying an application from a non-resident to purchase land here?

What are the restrictions on the land acquisitions of Cavendish Farms?

S.I.N.

Why is a person's Social Insurance Number called for on Enumeration Forms? Is this legal?

And in conclusion:

"We do not inherit the land from our parents, we borrow it from our children."

APPENDIX 1

SCHEDULE

FOCUS ON THE LAND: Preparing for the Royal Commission

PUBLIC MEETINGS:

Feb.	22	8:00 p.m.	Summerside - Three Oaks
Mar.	1	8:00 p.m.	Charlottetown - Farm Centre
Mar.	8	8:00 p.m.	Elmsdale - Westisle School
Mar.	13	8:00 p.m.	Montague - Curling Club

SESSIONS WITH COMMUNITIES, ORGANIZATIONS, SCHOOLS AND SPECIAL INTEREST GROUPS:

Feb.	21	The Media
Feb.	22	Three Oaks Senior High - 2 sessions
Feb.	23	Cooper Institute & Voluntary Resource Council
Feb.	23	Council of the Arts
Feb.	27	Women's Groups
Feb.	27	Environmental Groups & Alan Buchanan's Public Policy Class
Feb.	27	NFU

Feb.	28	Evangeline Community
Mar.	1	UPEI Faculty & Students
Mar.	2	Cornwall Village Council
Mar.	2	Rustico & Cavendish Planning Board
Mar.	3	Kensington High
Mar.	4	Farm Organizations
Mar.	6	D. Weale's Atlantic History Class
Mar.	6	Morell/St. Peter's Community
Mar.	7	W.I. Provincial Board
Mar.	7	Lennox Island Band
Mar.	7	Tignish Community
Mar.	8	Westisle High - 2 sessions
Mar.	9	PC Caucus
Mar.	9	Environmental Advisory Council
Mar.	10	Bluefield High
Mar.	13	Colonel Gray High - 2 sessions
Mar.	13	Montague High
Mar.	14	Morell High
Mar.	14	Souris High - 2 sessions
Mar.	14	Souris Community & Eastern Kings Advisory Board
Mar.	15	PEI Tourism Association
Mar.	16	Malpeque Community
Mar.	17	Heritage Foundation
Apr.	3	Belfast Community

Groups preferring to attend Public Meetings in their areas:

Chambers of Commerce, Summerside & Charlottetown
Credit Union League
Co-op Union
PEI Fishermen's Association
Mussel Growers
Southern Kings Regional Services Centre
East Prince Regional Services Centre
West Prince Regional Services Centre
Rotary
Shellfish Association
Social Action Committee
Anglican Church Women
Women's Institute Members
PEI Truckers Association
PEI Federation of Municipalities
Allied Youth
Association of Professional Engineers
Parks and People Association
Murray River Village Commission
PEI Architects Association

Canadian Manufacturers Association, PEI Division
PEI Federation of Labour
Friends of the Island
Islanders for a Better Tomorrow
The PEI Industrial Commissions

APPENDIX 2

SLIDE SHOW SCRIPT

THE FOCUS ON THE LAND slide show was intended for use as a teaching tool. It was designed to provide information about issues relating to land use, land ownership and the landscape as outlined in the mandate of the Royal Commission. It also gives background on changes since the 1973 Royal Commission.

At FOCUS ON THE LAND sessions the slide show was accompanied by a "fact sheet", five pages of information relating to the issues under discussion.

The sessions began with a quick overview of the fact sheet, followed by the slide show presentation. The slide show included 141 slides - a combination of photographs, graphs, maps and diagrams. Following the slide show there was a discussion period. The slide show proved to be the essential ingredient for teaching and discussion. It was very much appreciated wherever it was shown.

The slide show has been made into a video. Since there were requests from various organizations for further presentations, it was felt a video should be made available on an ongoing basis.

Copies are available from the Institute of Island Studies.

Focus on the Land
Slide Show Script

We begin in 1972. Non-residents were purchasing large acreages of shore front land. A company called CANADA LANDFUND was proposing large cottage subdivisions across the Island to sell to non-residents. Concerned by these developments, government appointed a Royal Commission on Land Ownership and Land Use. The Commission posed a number of questions to Islanders. Many of these questions are as relevant today as they were then. After a year's work, the Commission reported in 1973. Eventually several actions came from the Commission's report.

1) The Land Use Commission was established as an appeal body, with very broad powers, as shown by its recent decision on the Greenwich Development.

2) A new Planning Act was developed to provide a legislative basis for Land Use planning and regulation.

3) Communities were encouraged to develop official plans to regulate their own affairs.

Fifteen years after the report of the first Commission, a new Royal Commission on the Land has been appointed. Once again it is time to focus on the land.

There has been much change in Prince Edward Island since 1973. Population has been growing at a rate of 1000 persons per year since 1971. All of the growth has occurred in the urban and rural nonfarm population. Farm population is now less than half of what it was in 1971 as shown by the yellow colour on the slide. The number of farms has continued to decline from 4500 in 1971 to less than 3000 today. Most new residential growth has occurred within communities or on the margins of our existing towns and villages, or as small isolated subdivisions or as houses along the side of the road.

There has been much new commercial growth since 1973. Competition between new suburban shopping centres and the downtown core has been a matter for continuous public debate. Fast food outlets have proliferated along the roads into larger centres.

New industries have emerged and old ones have expanded since 1973. Some of the industrial growth has occurred in industrial parks while others have located in the open countryside. Some industries have begun and ceased operations during this period; others, such as the lobster facility in Victoria never got off the ground.

The tourist industry has grown and expanded over the past 15 years. We see new hotels, motels, a new tourist complex at Mill River, a variety of new tourist attractions, and new restaurants.

The same period has seen growth in public facilities - a new hospital, a new airport, new structures in the national park, and new schools.

As well, there have been changes in our basic resource industries. Aquaculture has expanded dramatically along our coastline, forestry has been rejuvenated with the development of a wood chipping industry and the consequent need for reforestation; potato growing has expanded with large fields, large equipment, and new packaging methods. Tobacco growing expanded throughout the 70's but has begun to decline in the mid 80's.

Although we sometimes think that change proceeds at a glacial pace on this Island, the slides we have seen so far demonstrate the considerable change that has occurred since the first Royal Commission report in 1973. The change and growth that has occurred, together with what may occur in the near future, has given rise to the issues that concern the Royal Commission on the Land. For the remainder of the presentation, we focus on some of the issues on which the Royal Commission will be seeking your views. At this stage, we pose the issues as questions - the answers will be contained in briefs submitted to the Royal Commission.

THE ISSUE OF RESIDENTIAL GROWTH - NEW HOUSING AND WHERE IT SHOULD BE LOCATED. "Land for sale" signs are a common feature in the countryside. Some of our new housing is built on serviced land within municipalities, as this house in Sherwood, but more than half of all new houses continue to be built in unserviced areas using individual wells and septic tanks. The upper line represents the percentage built on unserviced land, the lower line the percentage built on serviced land. In recent years, the gap is narrowing, but there are still three unserviced dwellings for each two serviced ones.

With more and more concentrated building in unserviced areas, problems increase - associated with pollution of wells as occurred around the Island Cablevision studio in Charlottetown - or malfunctioning of septic tanks. Should we continue to allow houses to be built more or less at random in our rural areas or should we find ways to encourage them within our built-up communities?

Agriculture is a precious resource. Does it need protection from strip development? In many places, farming and housing co-exist peacefully; in other areas there are conflicts, especially with intensive livestock operations. Do we need better planning to separate agricultural and residential uses? Should there be limits on strip development in rural areas?

THE ISSUE OF SUMMER COTTAGES: HOW MANY AND WHERE? The subdivision and sale of summer cottage lots continues apace. Lots are offered for sale both here and abroad as shown by this advertisement that appeared in the New England Magazine. In most years, the number of lots approved exceeds the number that are actually built on. The area in blue shows the excess of lots created over building permits approved. The figures may suggest that many cottage lots are being purchased for speculative reasons. Are too many lots being approved?

Traditionally, most summer cottage developments have been small one or a few cottages nestled by the shore. Within the last decade many summer cottage subdivisions are becoming larger. Recently, a development of 368 time-shared units was proposed at Greenwich. It was eventually turned down but many be symptomatic of what we may expect in the future. Is there an appropriate size for summer cottage development on this Island? Where, and at what scale, should cottage development take place? Should all land along the shore that is suitable for cottages be allowed to be subdivided?

Some cottage subdivisions are well-planned and well laid out; while others are designed so that every lot has shore frontage, resulting in long, thin lots with much waste space. Cottage subdivisions are highly visible parts of the coastline environment. Can we develop standards that would help cottages to blend in with the surrounding landscape?

THE ISSUE OF COMPATIBLE GROWTH IN RURAL AREAS: HOW DO WE SEPARATE CONFLICTING USES? In rural areas of the province without official plans, there are few restrictions on what can be allowed. Asphalt plants, auto junkyards, fish plants and intensive livestock operations create conflicts within communities. More and more, no one wants these developments in their back yard. Can we find more effective ways to resolve these conflicts?

THE ISSUE OF TOURIST DEVELOPMENT: IS THERE A NEED FOR CONTROLS? Thousands of tourists flock to our beaches each summer, where they create a demand for accommodation, food and attractions. Tourism is likely to continue to grow rapidly in the future. The diagram shows recent growth in tourist spending with a steady increase since 1984. How can we ensure that our tourist areas do not become cluttered as has happened at

Cavendish, where individual attractions collectively become a tourist strip and where a planning exercise has been undertaken to resolve the problems? How do we ensure the continuing attractiveness of areas surrounding our newer complexes such as those at Brudenell and Mill River? As a growth industry, how do we best protect our investment in tourism?

THE ISSUE OF NATURAL AREAS: HOW BEST CAN THEY BE PRESERVED? Environmental organizations have identified more than 30 areas across the province as natural areas worthy of protection. These are landscapes relatively untouched by human activities - in some cases, they have changed little since they were seen by the first settlers. Natural areas include coastal islands, sand dune and barrier beach complexes, bogs and saltmarshes, and outstanding areas of woodland. Most natural areas are privately owned. What should government policy be towards these areas? Should they be acquired by government or private organizations for permanent use? Should development within these natural areas be severely limited to preserve their natural beauty? The recent Greenwich case illustrates the need for policy in this area.

ISSUES OF HIGHWAY SAFETY AND EFFICIENCY: MAINTAINING THE ROAD NETWORK A growing economy, the end of railway services, and the possible coming of the fixed link highlight the need for an efficient and safe road network across the province. Existing regulations attempt to preserve the unhindered flow of traffic along highways. The map shows roads with restrictions on the location of driveways; on arterial highways, in red, no single lots are permitted; on collector roads, in orange, one lot is permitted per ten chains. On all our roads, sight distance standards established by highway engineers prevent building driveways in unsafe locations. How can public policy best maintain our road network which, as this example shows, is costly to maintain and upgrade? Are present driveway standards adequate to preserve public safety? Many of our roads have steep hills with poor visibility, while others have dangerous curves. Allowing houses in these locations could create severe hazards. Over the years disputes over the location or driveways have made up the largest number of appeals before the Land Use Commission. Should we continue to allow building along unpaved roads, when we know that this will ultimately result in a high cost to the public purse to pave the road?

THE ISSUE OF THE FIXED LINK: WHAT WILL IT BRING? The fixed link continues to be a matter of controversy, even after the plebiscite and the recent federal election. Studies on its feasibility have been done, but more are in the offing. If it comes, we can confidently predict that it will have major impact on land use. We should be trying now to anticipate that impact.

Now let us turn to some areas other than land use that the Royal Commission must consider. One of the most important of these is land ownership. Land ownership has been a major issue throughout the Island's history, since the lots were first awarded to absentee landlords in the late 1700's. At present - cottage lots, tourist attractions, motels and other lands and buildings continue to be sold to non-residents, an increase of 4 per cent from 1972, for an average of 3400 acres per year. Non-resident purchases are distributed fairly evenly across the province, but do show a concentration along the shore. What form should public policy take toward non-resident ownership? We now monitor sales but most applications are approved, as the graph shows. The upper line shows all applications; the bottom line shows those that are approved. Only in the earlier years was there a significant rate of denials. Has non-resident ownership become a paper exercise, as shown in these filing cabinets full of approved applications? Can we decide under what circumstances permission should be granted to purchase land in the province? What, specifically, should we be trying to protect with our ownership policies?

THE ISSUE OF LANDSCAPE QUALITY: HOW CAN IT BE MAINTAINED? The Island landscape is an important part of our economy and our heritage. Scenic vistas along the shore and the tranquil rural countryside are an inspiration to visitors and Islanders alike. What public policies can we develop to best maintain the quality of Island landscapes?

Signs can be an unobtrusive part of the landscape as these examples of the province's signage program show; in other locations signs can seriously detract from the landscape. Are present restrictions on signs along highways too weak or too strong? Do we need changes in our signage program?

Scenic vistas can be harmed in a variety of ways. Litter is unsightly. The same can be said of old car bodies. Constant efforts are necessary to keep our landscape clean. In serious cases, the Unsightly Property Act can be used to eliminate visual contamination. Are we doing enough to keep the Island landscape clean?

We have many outstanding views throughout the province to brighten our spirits as we pass by. Buildings stuck in the middle of a scenic vista can spoil its attractiveness. In areas of outstanding natural beauty, should development be restricted to preserve a view?

In some cases, legislation can protect scenery. A greenbelt along the Morell River keeps it clear of development. Scenic heritage roads can now be designated under the Planning Act.

Encouraging the aesthetic quality of the landscape is an issue whose surface has been barely scratched.

TAXATION ISSUES: CAN LAND TAXATION BE USED TO REGULATE LAND USE? How land is taxed may affect its use. The current court battle over non-resident taxation illustrates the emotion that can be generated by this issue. In general terms, should we use the tax system to try to shape land use? Is our market value and farm value system of taxation helping to preserve farmland? Should there be a distinction between residents and non-residents? Should land that is being neglected be taxed at a higher rate, as was suggested by the 1972 Royal Commission? Should persons preserving natural areas be given tax remissions on their land as long as they do not develop it?

Finally, we take a brief look at how we regulate land use and ownership within this province. Twenty-eight towns and communities have adopted official plans and zoning bylaws to plan and regulate land use within their boundaries. In rural areas that are not within municipalities or in communities with no official plans - areas shown in yellow and white on the map land use is regulated by the Planning Act Regulations. The Regulations provide the basis for approval or denial of applications. Denial can be based on undue damage to the environment or a detrimental impact on surrounding land uses, often difficult to determine.

Interpretation of these regulations gives rise to many appeals before the Land Use Commission. Should we actively encourage more communities to develop Official Plans? How can we improve the effectiveness of the Provincial Regulations?

WHERE DO WE GO FROM HERE? The forthcoming Royal Commission meetings provide an opportunity for Islanders to make their views known on the future of the Island and how that future can be attained. We have outlined a variety of issues and problems that the Royal Commission has been asked to address. What it will be seeking is your vision of the future of the province. We should think not only in terms of present day realities but in terms of Islanders too young to participate in these hearings. Only after hearing the considered thoughts of Islanders will the Royal Commission be able to write its final report.

APPENDIX 3

NEWSPAPER CLIPPINGS

TO HELP ROYAL COMMISSION

Guardian
Feb. 2/88

Land information hearings near

By Keith McNell

The University of Prince Edward Island's Institute of Island Studies will conduct an information program to help Islanders prepare for the hearings of the Royal Commission on the Land this spring.

Douglas Boylan
...chairman

Institute chairman Ian MacDonald told a news conference Wednesday the program, called Focus On The Land: Preparing For The Royal Commission, will be held Feb. 20 to March 17.

The program will be conducted at two levels. Public meetings have been tentatively set for Feb. 22 at Summerside's Three Oaks high school, March 1 at the Farm Centre in Charlottetown, March 8 at Westisle high school in Elmsdale and March 13 at the Montague Curling Club.

OFFER INFORMATION

The public meetings are intended to provide information about the commission's mandate and to encourage discussion among Islanders who may want to make a presentation to the commission.

But Mr. MacDonald said the institute is not seeking opinions on land issues. That will be left to the commission, headed by chairman Douglas Boylan, he said.

The second level involves P.E.I. organizations, for example, service clubs, businesses, schools and church groups. The institute will set up private sessions at times and locations of the organization's convenience to provide the information the group seeks.

Mr. MacDonald said that in the course of the sessions, major land issues will be identified but the institute will not suggest to Islanders the issues they should discuss with the commission.

PRELIMINARY SESSIONS

"It is our hope that the preliminary sessions will serve Islanders as well as prepare them to meet with the commission," he said.

The four-member commission was appointed by Premier Joe Ghiz last fall to look into the many land issues facing the province. Mr. Boylan said the commission has been given "quite broad" terms of reference to consider all issues affecting Island land and the people who live on it.

The last provincial inquiry into land use and ownership was in 1973 and Mr. Boylan said this commission will look at more issues than the 1973 inquiry. The commission will study the impact of changes since then and all existing legislation pertaining to land use, particularly laws regarding ownership by non-residents

COMPETING INTERESTS

Increased traffic and demand for Island property, particularly shorefront, the competing interests of agriculture, urban developement and tourism, the province's limited land base, highway advertising and double taxation are all identified as issues that will likely be discussed during the commission's hearings.

The commission's final report is expected by Jan. 31, 1990.

Mr. Boylan said the commission has decided on a three-tier approach to the hearings. The first tier is provincial briefs from province-wide organizations like the P.E.I. Federation of Agricultureor the National Farmers Union, for example. Those presentations will be heard in Charlottetown.

The second tier is community briefs, which will be heard in specific localities while the third tier is informal sessions, which will not require written presentations and will be held in various communities across the province.

The provincial briefs are expected to be heard starting in early April, followed by the community briefs and informal sessions in May.

SCHEDULE NOT FIRM

Mr. Boylan said, however, that a firm schedule for the hearings has not yet been drawn up.

The institute has engaged two staff people to co-ordinate the information sessions — Catherine Edward, who will act as co-ordinator, and John McClellan, recently retired executive director of the P.E.I. Land Use Commission, who will act as project advisor and assist Ms. Edward in conducting the information sessions.

In addition to Mr. Boylan, the other commissioners are Gail Wellner, a Charlottetown business consultant; Elmer MacDonald, a farmer and businessman and past president of the P.E.I. Potato Marketing Board; and Hugh Robbins, an engineering technician now retired and living in Montague.

FOCUS ON THE LAND
Preparing for the Royal Commission

A MESSAGE FOR ISLAND GROUPS AND ORGANIZATIONS

If your organization is thinking of presenting a brief to the Royal Commission on the Land, the Institute of Island Studies of the University of Prince Edward Island can help you. From February 20 through March 17, representatives from the Institute will meet with your group to outline the mandate of the Royal Commission, to present useful background information and to encourage discussion of the issues. A session for your group can be arranged at your convenience during this period.

To arrange a session for your group or for further information phone or write to:

Catherine Edward
FOCUS ON THE LAND
Institute of Island Studies
University of Prince Edward Island
Charlottetown C1A 4P3
566-0956

INSTITUTE of ISLAND STUDIES UPEI

PLEINS FEUX SUR LES TERRES,

préparation en vue de la Commission royale

UN MESSAGE A L'INTENTION DES GROUPES ET ORGANISATIONS DE L'ILE

L'Institut d'études de l'Ile de l'Université de l'Ile-du-Prince-Edouard peut aider les organisations qui songent à présenter un mémoire à la Commission royale sur les terres. En effet, du 20 février au 17 mars, des représentants de l'Institut rencontreront des groupes pour leur exposer le mandat de la Commission royale, leur donner des renseignements utiles et favoriser la discussion sur les sujets qui s'y rattachent. Nous pouvons, durant cette période et lorsque cela vous conviendra, organiser une séance pour votre groupe.

Pour bénéficier d'une telle séance ou pour obtenir plus de renseignements, écrivez ou téléphonez à:

Catherine Edward
PLEINS FEUX SUR LES TERRES
Institut d'études de l'Ile
Université de l'Ile-du-Prince-Edouard
Charlottetown (I.-P.-E.)
C1A 4P3
Tél: 566-0956

INSTITUT d'ÉTUDE de l'ÎLE UPEI

[illegible] Feb 13/89

Information sessions on land commission set

The Institute of Island Studies has announced the locations and times for a series of public information meetings for the Royal Commission on the Land.

The royal commission has contracted the Institute of Island Studies to conduct the information sessions which are entitled Focus On The Land. The sessions will be held from Feb. 20 to March 17.

The public meetings will be held at Summerside's Three Oaks senior high school Feb. 22; at the Farm Centre in Charlottetown March 1; Westisle composite high school, Elmsdale, March 8; and at the Montague Curling Club, Montague, March 13.

All meetings begin at 8 p.m. and in the case of a storm the meeting will be held the next day at the same location.

MACDONALD CHAIRMAN

Catherine Edwards, project co-ordinator, notes the meetings will be chaired by Ian MacDonald, chairman of the institute. Sessions are aimed at providing information about the royal commission hearings and the commission's mandate.

Ms. Edwards explained that the other component of Focus on The Land is directed at Island groups and organizations. She explained that groups and organizations interested in making presentations to the commission will have an opportunity to meet with Ms. Edwards and porject advisor John McClellan at times and locations convenient to them. During these sessions, group representatives will see a slide show, receive information sheets and have an opportunity to discuss the commission's mandate.

"These meetings will be scheduled on a first-come, first-serve basis," she said. "I would urge interested groups and organizations to contact me as soon as possible by phone or letter, to set up meetings. Since our time is short, we would like as much as possible to schedule more than one meeting in a particular area."

NOT SEEKING VIEWS

Ms. Edwards stressed that Focus On The Land, is not designed to solicit the views of Islanders on land issues.

"That is the task of the Royal Commission on Land."

She said the job of the institute is to provide Islanders with information about the commission and its mandate and to promote discussion so they can be better informed when they appear before the commission.

Interested groups and organizations who wish to meet with the staff of Focus On The Land, are asked to contact Ms. Edwards at the Institute of Island Studies, Extension Department, UPEI C1A 4P3 (902) 566-0368.

THE JOURNAL-PIONEER Feb. 23/89

POPULATION

Meeting Discusses Land Use

John MacLellan (left) discusses with Keith Tompkins (right) and Ian MacDonald, chairman of the Institute of Island Studies, the growth in the Island population since 1973, as illustrated by a graph that formed part of background information available to people attending an Institute-sponored meeting in Summerside on Wednesday. MacLellan, former executive director of the P.E.I. Land Use Commission, now works for the Institute while it carries out a public information program in advance of the Royal Commission on the Land. The Summer
meeting was the first of four public information m
ings planned across the province to help Islanders
pare to participate in the work of the royal commiss
The Institute expects to also conduct about 50 infor
tion sessions for groups and communities before
royal commission starts its round of public meeeting
April. (Kr

24—The Guardian, Charlottetown, Sat., Feb. 18, 1989

Focus on land program begins next week

Starting next week with public meetings, the Institute of Island Studies begins its program called Focus On The Land. Preparing for the Royal Commission.

The first of four public meetings will be held Wednesday, Feb. 22, at Three Oaks senior high in Summerside at 8 p.m.

Subsequent meetings will be held in Charlottetown, March 1, Farm Centre, 8 p.m.; Elmsdale, March 8, Westisle school 8 p.m.; and Montague, March 13, curling club, 8 p.m.

These public meetings will consist of a slide presentation given by John McClellan, former executive director of the Land Use Commission, outlining land issues as they face Islanders today, 15 years after the last Royal Commission on Land Use and Land Ownership.

OUTLINING CHANGES

A fact sheet outlining changes since that time will be distributed. Discussion will follow, giving the public a chance to comment on the mandate of the Royal Commission. Many questions will be raised.

Did you know that between 1971 and 1986 both the number of farms and the amount of land in agriculture declined? Less than half the total area of the province is now occupied by farms. Did you know that between 1973 and 1988 an average of 3,400 acres were converted annually from resident to non-resident ownership?

This means acreage owned by non-residents increased from 7 per cent to 11 per cent of the total area of the Island. Did you know that between 1975 and 1987 annual expenditures by tourists increased from $26 million to $82 million? And that rural and seashore vistas are an important element of the tourist experience? These are some of the questions people will be discussing as they have a look at issues relating to land use, land ownership and landscape.

WELL-PREPARED PUBLIC

It is the hope of the Institute of Island Studies and the Royal Commission on the Land that a well-prepared public will result in hearings of a greater depth and value - reflecting the fellings and concerns of the people.

Focus on the Land co-or
Catherine Edward adds. "W
all ask ourselves what kind
we want this to be and how
achieve this. This is everyon
ness.

For information call the
of Island Studies at 566-0956

Land use question complicated one

By Doug Gallant

:o single land use issue, but rather
.eries of important issues, neces-
ated the Royal Commission on
nd Use holding public hearings
ross the province next month, says
nn McClellan, a former executive
ector of the Land Use Commis-
n.

John McClellan
...project advisor

Mr. McClel-
., currently
rving as a re-
urce person
the Institute
Island Stud-
' Focus on
e Land pro-
am, says a
nole range of
sues have
opped up
nce the last
yal commis-
on on land use
years that
oint to the
eed for an-
her look at the issues.

Issues like the recently dismissed Greenwich Development and the proposed Boughton Island cottage development amount to environmental "brush fires" and raise the question of what kind of policy should be developed, he said.

RAISING QUESTIONS

"A lot of questions are being raised by development proposals like that, for instance, should all offshore islands be declared development-free? And there are other concerns as well, concerns about issues like non-resident taxation, signage, and the enforcement of signage laws, the fixed link and the construction of housing developments near agricultural land. There are many issues to be addressed."

Mr. McClellan said the fixed link alone raises several questions because of the projected increase in traffic and numbers of potential visitors to Prince Edward Island.

"There are a number of questions that must be answered and government wants a sense of what the people are feeling."

And while there are many special issues to be addressed, Mr. McClellan said the connection must be made between specific issues like the Greenwich development and the need for policy.

COMPREHENSIVE POLICY

He indicated there is a need for the kind of comprehensive policy which would eliminate the need for extended, complex and expensive Land Use Commission hearings like those mounted for the Greenwich development.

But response to the Focus on The Land program, which amounts to a series of preparatory sessions for the royal commission's forthcoming hearings, are not drawing the kind of public response anticipated.

One session at the university drew less than a dozen people, and another
at the Farm Centre the same
drew less than 50.

That kind of response, or ra
lack of response, spurs Mr. McC
lan to admit he's not sure how pe
are "grabbed" by land use anym

"The spark that was there
the first hearings on land use
held in 1975 isn't there. For th
first hearings, the halls were f
with farmers with concerns a
agriculture. It's possible we've
gressed to the point where word
zoning don't strike the kind of fe
people that they used to. People r
become more sophisticated."

SOMETHING ELSE

He also suggested that in this
age of the electronic media, n
people don't want to spend tw
three hours in a meeting hall de
to a single issue because their a
tion spans have been tailored t
length of the average situation
edy.

Mr. McClellan also noted th
that a number of bodies and or
zations, like the National Far
Union, Cornwall community c
and the Cavendish planning b
have met or are meeting wit
commission for private inform
sessions.

The purpose of those sessions
the public meetings planned in
nection with the program, is t
plain the various issues involve
to attempt to make the conne
between those issues and the ne
policy.

"We explain what the comm
is looking for, the issues that s
be addressed."

BASIS OF ECONOMY

That takes in a lot of grou
cause, Mr. McClellan suggest
land is still the basis of the
economy.

The former LUC executive
tor indicated the whole quest
land use and what should be d
Prince Edward Island can't
be left up to the Land Use Co
sion.

"The Land Use Commission
here to set policy," he said, e
ing that the real function of th
mission is to interpret existin
lation in relation to the appli
filed before it.

"And overall the commiss
done a pretty fair job of it."

Further public meeting
planned as part of the Focus
Land program and infor
about these meetings is availa
calling 566-0386.

Plans Ready For Public Meeting

CHARLOTTETOWN - The Insitute of Island Studies has finalized the locations and times for its series of public meetings for Focus on the Land: Preparing for the Royal Commission.

The institute has been engaged by the Royal Commission on the Land to carry out an information program before the commission's public hearings later this spring. The program will be held from February 20 to March 17.

In the first part of the program, the institute will hodl the public meetings at four locations across Prince Edward Island, project coordinator Catherine Edwards said in a recent news release.

The locations and dates are: Summerside, Three Oaks Senior High School, February 22; Charlottetown, the Farm Centre, March 1; Elmsdale, Westisle Composite High School, March 8; and Montague, Montague Curling Club, March 13. All meetings will begin at 8 p.m. In case of a storm, the meeting will be held the next day at the same location.

These meetings [illegible] be [illegible]d by institute chairman Ian MacDonald, will provide the public with information about and time for discussion of the commission's mandate.

The second part of Focus on the Land is directed at Island groups and organizations, said Edwards. Groups and organizations interested in making presentations to the commission will have an opportunity to meet with Edwards and project advisor John McClellan at times and locations convenient to them. During these sessions, group representatives will see a slide show, receive information sheets, and have an opportunity to discuss the commission's mandate.

"These meetings will be scheduled on a first-come, first-served basis. I would urge interested groups and organizations to contact me as soon as possible, by phone or letter, to set up meetings. Since our time is short, we would like as much as possible to schedule more than one meeting in a particular area," said Edwards.

"I would like to stress that Focus on the Land is not designed to solicit the views of Islanders on land issues. That is the task of the Royal Commission on the Land. Our job is to provide Islanders with information about the commission and its mandate, and to promote discussion so they can be better informed when they appear before the commission."

Interested groups and Islanders who want to meet with Focus on the Land should contact Catherine Edwards at the Institute of Island Studies, UPEI.

Journal-Pioneer Monday, Feb. 13/84

FOCUS ON THE LAND
Preparing for the Royal Commission

PUBLIC MEETINGS

A series of public meetings to provide information, and the opportunity for people to respond to the mandate of the

Royal Commission on the Land

February 22	Summerside	Three Oaks High School	8:00 p.m.
March 1	Charlottetown	Farm Centre	8:00 p.m.
March 8	Elmsdale	Westisle School	8:00 p.m.
March 13	Montague	Curling Club	8:00 p.m.

INSTITUTE of ISLAND STUDIES iis

GUARDIAN FEB. 22/89

p. 8 Journal-Pioneer Feb-22/89

Land public information meetings to begin

The Institute of Island Studies tonight will begin the first of a series of public information sessions in advance of the upcoming royal commission on land use in P.E.I.

Tonight's initial session will begin at 8 p.m. at Three Oaks high school in Summerside.

These sessions, called Focus On The Land, were introduced to the local media at a press conference Tuesday on the UPEI campus. The institute is a research, education and public policy organization at the university.

John McClellan, a former executive director of the Land Use Commission, explained that the sessions are designed to receive public input into the various land issues that concern Islanders.

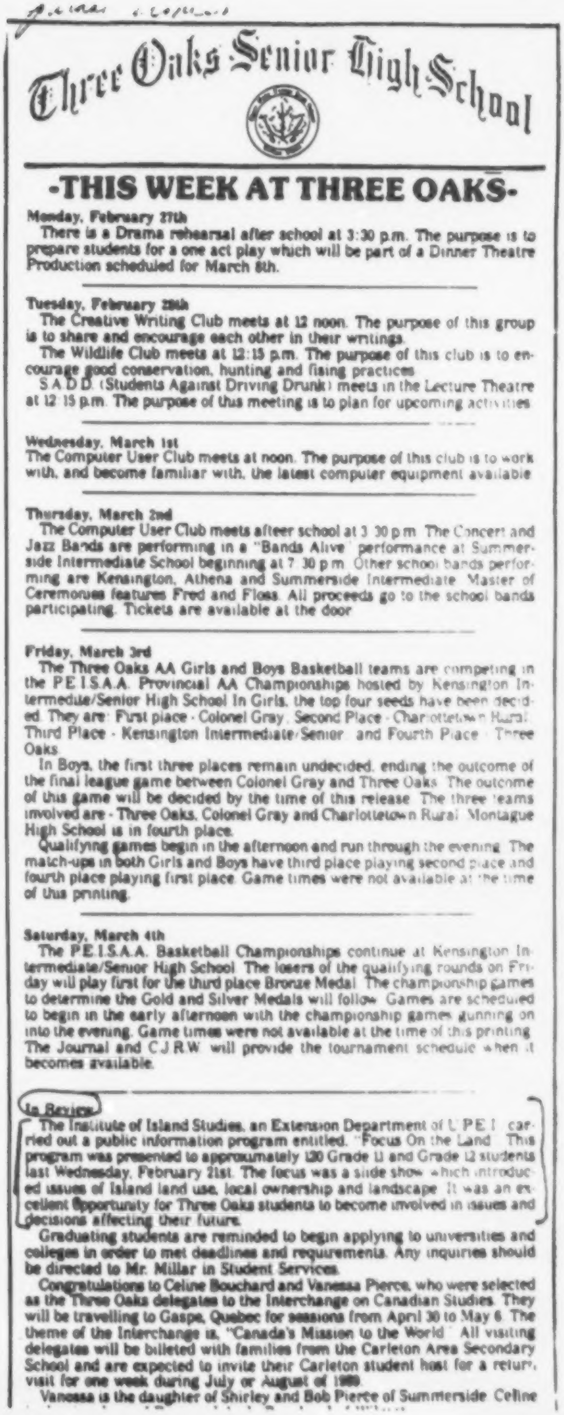
The commission is designed to "propose directions for the future" of land use in the province, noted Mr. McClellan.

Mr. McClellan then previewed a 15 minute slide presentation on Island land issues, which will be used at the sessions.

He noted the first royal commission on land use presented its report to the provincial government in 1973. The commission lead to the formation of the Land Use Commission and passage of a new P.E.I. Planning Act.

In the slide presentation, Mr. McClellan noted that between 1971 and 1986, the Island population has grown from 111,641 to 126,646, an average increase of 1,000 persons per year. The farm population has declined by half over this period and less than eight per cent of the total population live on farms.

He noted that over the next few years the Island will have to deal with the issue of ownership of Island land by non-residents.



Three Oaks Senior High School

-THIS WEEK AT THREE OAKS-

Monday, February 27th

There is a Drama rehearsal after school at 3:30 p.m. The purpose is to prepare students for a one act play which will be part of a Dinner Theatre Production scheduled for March 8th.

Tuesday, February 28th

The Creative Writing Club meets at 12 noon. The purpose of this group is to share and encourage each other in their writings.

The Wildlife Club meets at 12:15 p.m. The purpose of this club is to encourage good conservation, hunting and fising practices.

S.A.D.D. (Students Against Driving Drunk) meets in the Lecture Theatre at 12:15 p.m. The purpose of this meeting is to plan for upcoming activities.

Wednesday, March 1st

The Computer User Club meets at noon. The purpose of this club is to work with, and become familiar with, the latest computer equipment available.

Thursday, March 2nd

The Computer User Club meets afteer school at 3:30 p.m. The Concert and Jazz Bands are performing in a "Bands Alive" performance at Summerside Intermediate School beginning at 7:30 p.m. Other school bands performing are Kensington, Athena and Summerside Intermediate. Master of Ceremonies features Fred and Floss. All proceeds go to the school bands participating. Tickets are available at the door.

Friday, March 3rd

The Three Oaks AA Girls and Boys Basketball teams are competing in the P.E.I.S.A.A. Provincial AA Championships hosted by Kensington Intermediate/Senior High School. In Girls, the top four seeds have been decided. They are: First place - Colonel Gray, Second Place - Charlottetown Rural, Third Place - Kensington Intermediate/Senior, and Fourth Place - Three Oaks.

In Boys, the first three places remain undecided, ending the outcome of the final league game between Colonel Gray and Three Oaks. The outcome of this game will be decided by the time of this release. The three teams involved are - Three Oaks, Colonel Gray and Charlottetown Rural. Montague High School is in fourth place.

Qualifying games begin in the afternoon and run through the evening. The match-ups in both Girls and Boys have third place playing second place and fourth place playing first place. Game times were not available at the time of this printing.

Saturday, March 4th

The P.E.I.S.A.A. Basketball Championships continue at Kensington Intermediate/Senior High School. The losers of the qualifying rounds on Friday will play first for the third place Bronze Medal. The championship games to determine the Gold and Silver Medals will follow. Games are scheduled to begin in the early afternoon with the championship games gunning on into the evening. Game times were not available at the time of this printing. The Journal and C.J.R.W. will provide the tournament schedule when it becomes available.

In Review

The Institute of Island Studies, an Extension Department of U.P.E.I. carried out a public information program entitled, "Focus On the Land." This program was presented to approximately 120 Grade 11 and Grade 12 students last Wednesday, February 21st. The focus was a slide show which introduced issues of Island land use, local ownership and landscape. It was an excellent opportunity for Three Oaks students to become involved in issues and decisions affecting their future.

Graduating students are reminded to begin applying to universities and colleges in order to met deadlines and requirements. Any inquiries should be directed to Mr. Millar in Student Services.

Congratulations to Celine Bouchard and Vanessa Pierce, who were selected as the Three Oaks delegates to the Interchange on Canadian Studies. They will be travelling to Gaspe, Quebec for sessions from April 30 to May 6. The theme of the Interchange is, "Canada's Mission to the World." All visiting delegates will be billeted with families from the Carleton Area Secondary School and are expected to invite their Carleton student host for a return visit for one week during July or August of 1989.

Vanessa is the daughter of Shirley and Bob Pierce of Summerside. Celine

Jour Pioneer, Feb. 23/79

Air Strong Feelings Over Double Taxation Issue

By Bob Kelly
(J-P Staff Writer)

Double taxing non-resident property owners emerged as a dominant issue Wednesday on the minds of Islanders who began the process of focusing views on the land and future of their province.

Views on that controversial subject — and many others — were aired during a public information meeting in Summerside last night, the first of four the Institute of Island Studies at UPEI has planned across the province before the Royal Commission on the Land begins its work in April. The Institute was hired by the commission, announced last October, to conduct public information meetings and information sessions with communities and groups in order to prepare Islanders to participate in the work of the commission.

SEES DISCRIMINATION

Fifteen people attended the meeting in Summerside. They heard Summerside lawyer Mel Campbell slam the double taxation policy as "offensive to Canadians", discriminatory and probably illegal.

A group of non-resident property owners who also don't like the new law brought in by the Liberal government is suing the government to change it.

Campbell said it's also unfair to charge a $500 fee for any non-resident who applies to cabinet for permission to buy more than five acres in the province. That limit was reduced from 10 acres.

Campbell said the law is unfair to people who want to buy property and move into the province since, technically, they don't qualify as residents until some time after they arrive. In those cases, it might be reasonable to refund the $500 fee once they have established residency, he suggested.

He questioned whether there was any logical purpose behind both changes. Since cabinet routinely approves virtually all applications to buy land "all they've done is compound the bureaucracy of the province," he charged.

The lawyer said some of his non-resident clients have even signed over summer properties to their Island relatives in order to avoid double taxation.

Chris Jones expressed the view that government started double taxing non-residents simply as a way to raise more money, an opinion that was supported by John MacLellan, the former executive director of the P.E.I. Land Use Commission, who is working for the Institute while it works for the royal commission. He said he believes the $500 for non-resident applications was also implemented as a money-maker.

MANY ISSUES

Farmer David Walker said that in some cases farmers such as himself who rented farmland from non-resident owners are forced to pay more to cover the higher taxes put on that land. It's his view that non-residents shouldn't be allowed to own any land in the province. He said many other Islanders whose families have lived on the land for generations recall the period in the past when non-residents owned the entire province.

It was stressed though that there are many other issues to be dealt with besides the non-resident issue, most of them more important, and that the royal commission should focus on them. Campbell pointed out, and MacLellan agreed, that the actions of Islanders have more bearing on land issues than what non-residents have done.

Joe McCardle of Augustine Cove said that while land ownership is an important question, land use is the more important issue, particularly in terms of its impact on the environment and other concerns.

IMPROVE HIGHWAYS

Several people raised concerns about increasing traffic on Island highways, especially summertime traffic in busy tourism areas, and the need for a better highway system to meet that demand. Walker said that issue is dear to farmers too who find it's getting harder to even get farm machinery onto the highways because of more traffic. Once farmers get on the highways, motorists complain that they slow down traffic, but most roads are too narrow to drive machinery on the side, Walker said.

Eastern Graphic Feb 15/84

Meetings offer info on Island land deals

Meetings will be held across the Island in the next few weeks to help provide necessary background information for people wanting to present briefs to the Royal Commission on the Land. That body starts touring the province in April.

The Institute of Island Studies has been engaged to get information to the public and also to get feedback from Islanders on what issues they want addressed by the Commission.

"It's an opportunity for people to have input. Feedback (received at the IIS meetings) will help the Royal Commission know what people see as the issues and problems, so they won't forget some things that the people think are important," said Catherine Edward of Belfast who is the project co-ordinator.

The success of the Royal Commission depends on public participation and understanding of the issues, she said.

Project advisor is former Land Use Commission chairman John MacLellan who along with Ms Edward will hold a public meeting in Montague on March 13th, 8 p.m. at the Curling Club.

A meeting will be held in Elmsdale on March 8 at the WestIsle School. Other public meetings will be held in Charlottetown and Summerside

Fact sheets, a slide presentation and displays will provide background on such things as land sales, changes in land use and many related topics important to Islanders.

Any group of people can arrange for an information session to be held in their area by calling Ms Edward at 566-0956. The deadline for holding these meetings is March 17th and she urged anyone interested to call her to book a time immediately.

"This is extremely important. The future of the Island is wrapped up in land issues as it always has been through our history.

"We have to ask ourselves what kind of an Island we want and how do we get there? Change is inevitable. Will we manage change, or will change manage us, that's the question," Ms Edward concluded.

DISCUSS LAND ISSUE Guardian Feb 23/89

Information meeting attracts poor turnout

SUMMERSIDE – P.E.I.'s treatment of non-resident landowners was the main topic of discussion at the first in a series of public meetings organizing by the Institute of Island Studies in preparation for the Royal Commission on land use.

The institute is holding four meetings across the Island to gather public input on the topic of land use. The other three meetings will be held in Charlottetown at the Farm Centre March 1, in Elmsdale at Westisle school March 8, and at the Montague Curling Club March 13. All meetings start at 8 p.m.

There was a small turnout for the Summerside meeting Wednesday, and the main topic was the province's double taxation of non-resident property owners.

NON-RESIDENTS 'REPULSED'

Summerside lawyer Mel Campbell told the institute that many non-residents who come into his office to file an application to buy land on P.E.I. are "repulsed" by the fact they must pay a $500 fee even though the vast majority of applications are approved, and there is double taxation on non-resident owners.

Faced with such controversial issues as the proposed construction of a fixed link between P.E.I. and New Brunswick, the provincial government appointed a royal commission last fall to study all matters relating to land ownership, land use and the quality of Island landscape.

The commission will hold 15 public hearings across the province beginning April 3 to gather the views of various organizations and individuals.

The Institute of Island Studies, based at UPEI, has been engaged by the Royal Commission to carry out a public information program in advance of the actual commission hearings.

In 1972, a similar royal commission on land use was held, but government felt another study was needed because there has been a considerable change in population distribution since that time.

Between 1971 and 1986, the population of the Island grew from 111,641 to 126,646, an average increase of 1,000 persons per year. Most population growth between 1971-86 occurred in urban centres and surrounding rural land. Farm population declined by more than half during that period. Less than eight per cent of the total population now lives on farms.

The new royal commission will start with provincial hearings in Charlottetown on four successive Mondays: April 3, 10, 17 and 24. Community hearings will follow

Pleins feux sur les terres

Par Jacinthe LAFOREST

On aperçoit M. John McClellan, conseiller pour PLEINS FEUX SUR LES TERRES et Mme Anna MacDonald, assistante à l'Institut d'étude de l'Île.

L'Institut d'étude de l'Île, qui est un institut de recherche et d'enseignement sur des sujets d'intérêt public, tient ces jours-ci une série de rencontres, PLEINS FEUX SUR LES TERRES, ayant pour but de renseigner de façon objective les habitants de la province, en vue des audiences publiques de la Commission royale sur les terres.

Cette commission a été créée en octobre dernier par le Conseil exécutif de la province, pour étudier toutes les questions se rapportant à la propriété et à l'utilisation des terres ainsi qu'à la qualité du paysage. Les audiences publiques, au nombre de 15, débuteront au mois d'avril.

Deux représentants de l'Institut d'étude de l'Île, Mme Anna MacDonald, assistante et M. John McClellan, conseiller pour le projet , étaient à la salle de conférence Monseigneur Buote du Centre d'éducation Evangéline, le mardi 28 février dernier. Personne ne s'est présenté à cette réunion.

Parmi les questions que la Commission royale sur les terres étudiera, mentionnons :

–les effets d'un lien permanent sur l'utilisation des terres ;

–le développement touristique : jusqu'à quel point on doit le contrôler ;

–les régions naturelles et la meilleure façon de les préserver .

PLEINS FEUX SUR LES TERRES a été conçu pour fournir aux gens des renseignements sur ces points et de nombreux autres, afin qu'ils puissent présenter des points de vue clairs et bien informés lors des audiences publiques.

La commission se penchera également sur l'efficacité de nombreux règlements et lois de la province concernant les terres :

–loi sur la planification (Planning Act) : qui définit les règles de base se rapportant à l'utilisation des terres. Elle donne à la province un certain pouvoir décisionnel en vertu de son règlement d'application et elle permet aux municipalités d'adopter des plans officiels et des règlements de zonage ;

–loi sur la protection des terres (Land Protection Act) : qui réglemente les conditions d'achat de terres par les non-résidents et les corporations et limite la superficie maximale pouvant appartenir à un non-résident, à un résident et à une corporation ;

–loi sur la protection des sites archéologiques (Archaeological Sites Protection Act) ;

–loi sur les cimetières d'automobiles (Automobile Junkyards Act) ;

–loi sur la protection de l'environnement (Environmental Protection Act) ;

–loi sur la publicité routière (Highway Advertisements Act) ;

–loi sur la protection des régions naturelles (Natural Areas Protection Act) ;

–loi sur la propriété foncière (Real Property Act) ;

–loi sur l'évaluation des propriétés foncières (Real Property Assesment Act) ;

–loi sur l'impôt foncier (Real Property Tax Act) ;

–loi sur les installations récréatives (Recreation Development Act) ;

–loi sur les propriétés inesthétiques (Unsightly Property Act).

PLEINS FEUX SUR LES TERRES tiendra une réunion publique à l'école Westisle d'Elmsdale le mercredi 8 mars et au club de curling de Montague le lundi 13 mars prochain. Des réunions publiques ont eu lieu à Charlottetown et à Summerside plus tôt.★

La Voix Acadienne Mar. 8/89.

ANNUAL MEETING 1989
MALPEQUE BAY 'CIC'
(COMMUNITY COUNCIL #1534)

Old School Districts: Baltic Darnley Hamilton
Indian River Malpeque Sea View Spring Valley

DATE: THURSDAY, 16th MARCH 1989 - 7:30 p.m.
PLACE: SPRING VALLEY HALL
AGENDA: As per P.E.I. Municipalities Act
PROGRAMME: FOCUS ON THE LAND - preparing for the Royal Commission on the Land - with representatives of the INSTITUTE OF ISLAND STUDIES Information and discussion

AD Run in J-P by Malpeque CIC

Public meeting

March 13/89

CHARLOTTETOWN — The Institute of Island Studies will hold a public meeting at the curling club in Montague today at 8 p.m. to present an information progam called The Focus On The Land: Preparing for the Royal Commission.

The program is designed to present Islanders information about the Royal Commission on the land, its manadate and the issues it will be discussing during its hearings this spring. Community meetings will be held this week in Souris Tuesday night at the high school and Thursday for Malpeque at Spring Valley Hall at 7 p.m. The public is invited to attend these meetings.

Guardian

Use, abuse of Island land subject of royal commission

Guardian March 3/89

Organizers preparing Islanders for the Royal Commission on Land say the use and abuse of land and its effect on Island lifestyles during the past 15 years will be the focus of Island-wide inquiry.

The second information meeting regarding the Royal Commission on the Land was held Wednesday night at the Farm Centre in Charlottetown by the Institute of Island Studies.

Harry Baglole, director of the institute, said the meetings are trying to inform the public of the mandate of the commission, the first to study land since 1972.

The meeting featured a slide show by the institute accompanied by an explanation by John McClellan, a former executive director of the P.E.I. Land Use Commission, about what has been happening to the land since the last royal commission.

LAND DISAPPEARING

Mr. McClellan described how in the past 15 years farmland along the roadside has been sold by farmers for strip development, how parcels of shorefront land were divided for development so each lot has a piece of waterfront. Some areas areas had their own planning strategies while others fell to the provincial government for implementation under the Planning Act.

There was also a discussion of the "arterial" and "collector highways" throughout the province and the way in which present regulations restrict construction of driveways at certain points along these highways because of blind hills and sharp curves.

Mr. Baglole said the institute will be holding more than 40 meetings at various locations "trying to put the whole thing in perspective.

He said he thinks it's important people are aware of land use on P.E.I. He pointed out, for example, that some land is being farmed "very intensively," causing depletion of nutrients in the soil and erosion.

COMPREHENSIVE POLICY

He also said "a more comprehensive policy" on environmentally sensitive areas such as Greenwich and Boughton Island is necessary

Government likely waited 15 years before holding another royal commissions because economic struggles led to an easing off of pressure on land use in the late '70s and early '80s.

He expects the Institute of Island Studies will' have its report submitted to the royal commission by the end of March, about two weeks after its final meeting on March 17 The report will be a summary of the meetings, the numbers of individuals who attended, and what groups attended.

The royal commission will be addressing issues such land ownership and its taxation, land use legislation and land use in general as it pertains to such things as the fixed-link crossing, natural areas, agricultural land and highway safety and efficiency

Between 1971 and 1986, crop production increased by 35,000 acres dispite declines in the numbers of farms and overall farmland acreage; the population grew to 126,646, an average increase of 1,000 persons per year and farm population declined by more than half during this period, leaving the total population living on farms at less than eight per cent

During the period of 1973 to 1988, an average 3,400 acres a year were converted from resident to non-resident ownership, raising the figure from seven per cent to 11 per cent In this time, the number of building permits issued for cottages was exeeded by 3,500 more cottage lots approved

The royal commission on the land will begin its hearings April 3 after which they will be held on successive Mondays until May 29, with the exception of Victoria Day on Monday, May 22, when they will be held Tuesday, May 23.

Inquiries regarding the role and activities of the Commission should be directed to the commission at 368-5970 or by writing to Post Office Box 2799, Charlottetown, C1A 8C2.

Institute hosts meeting to explain commission

By Richard Wightman

Guardian, March 1, '89

ELMSDALE — Ten members of the public attended a recent public information meeting at Westisle hosted by the Institute of Island Studies to inform the public about the upcoming royal commission on land.

Ian MacDonald, chairman of the Institute of Island Studies, conducted the Westisle meeting assisted by John McClellan, former executive director of the Land Use Commission. Royal commission members Elmer MacDonald and Hugh Robbins attended the Westisle meeting.

The Westisle meeting was the third of four the institute will hold across the Island where it presents a program called Focus on the Land, to help inform the public on the issues of land use in advance of the commission hearings.

PRESENTS INFORMATION

Mr. McClellan presented graphical information noting an increase in the Island's population from 111,641 in 1971 to 126,646 in 1986. A royal commission on land ownership and land use made a report in 1973 but there have been a number of changes since that time.

Urban and rural non-farm sectors of the population have accounted for this increase in population. Crop land has decreased a bit while the number of farms has declined with the average size of farms increasing.

The service sector of the economy has accounted for the major increase in employment with the number of women in the work force increasing.

The tourist industry has expanded after the recession of the early 1980's. Many new homes are still constructed in unserviced lots. Many more summer cottage lots have been approved than actual cottages constructed.

MORE NON-RESIDENTS

Non-resident land ownership has increased from seven per cent to 11 per cent from 1973 to 1988. A good deal of this non-resident ownership is in lots of more than 10 acres.

Executive Council now approves most requests for permission to own more than five acres of land or more than 165 feet of shore frontage. Mr. McClellan also showed a slide show pointing out many of the issues facing land use in the province.

The institute is also having a number of private meetings with groups in smaller centres. Mr. MacDonald said some of these like the one they held in Lennox Island earlier in the day were well attended and brought up a number of interesting questions.

Some of those attending the Westisle meeting questioned taxing non-resident landowners at a higher rate if they were making good use of the land. Other questions related to chemical use in farming, green belts, regulations, ground water, right to farm legislation, municipal dumps and appeals regarding land purchases.

LITTLE INTEREST

Mr. McClellan said they met with two Westisle classes earlier in the day. He said this was tried in Summerside and a majority of the class indicated they were not very interested in land use on the Island as they did not intend to live their lives on the Island.

The royal commission on the land will hold some provincial hearings in Charlottetown in April and community hearings in May at different centres around the province. The first of these community hearings will be in Alberton May 1. Written briefs will be required at these hearings.

A series of six informal hearings around the province will then follow when written briefs will not be required.

March
13 Journal
Pioneer

Finds Land Owned By Non-Residents Increasing Rapidly

By Eric McCarthy
(J-P Staff Writer)

ELMSDALE — Since 1973, the amount of P.E.I. land owned by non-residents has grown from seven per cent of total acreage to 11 per cent, and the amount of shore frontage owned by non-residents is estimated to amount to 17-20 per cent of the total shore frontage in the province.

Such figures are among the information the Institute of Island Studies is presenting to Islanders as it helps them prepare for a series of public hearings on land use use and land ownership planned for April.

The public hearings will be conducted by the P.E.I. Royal Commission on the Land, which was appointed by government on October 20. The first four of the public hearings will be held at West Royalty Community Centre on April 3, 10, 17 and 24 with sessions scheduled for the morning, afternoon and evening.

Those sessions are intended for provincial organizations and Charlottetown area individuals. They will be followed by community hearings in Alberton, Miscouche, Kensington, Belfast and Souris on May 1, 8, 15, 23 and 29, respectively, to hear the views of community-based organizations and of individuals who live in the area of the hearings.

The Instutute's third in a series of four public information meetings was held in Elmsdale last Wednesday. The final one will be held in Montague tonight. In between, a number of community-based sessions were planned.

CHEMICALS CONCERN

One of the main concerns coming out of the meeting Wednesday had to do with use of chemicals. Leona Lane said the Commission's mandate doesn't mention chemicals at all.

John McClellan, former executive director of the P.E.I. Land Use Commission, now resource person for the Institute's series of meetings, assured her that if anyone addressing the Commission listed chemicals as a concern, then the members would have to deal with that matter. He said chemicals probably weren't mentioned in the Commission's mandate because, in the last session of the legislature, the provincial government passed the Environmental Protection Act which should address that concern.

DOUBLE TAXATION

Double taxation for non-residents was cited as unfair by some people. Alvin Yeo told about a family of non-residents who developed their Island land into forestry and, although they are helping to develop the Island's forestry resource, they are being taxed twice as much for their land as residents.

McClellan suggested that perhaps anyone who implements long-term development of their land should be offered a tax break by the provincial government, whether resident or non-resident.

Therese D'amor was particualrtly interested in preservation of natural sites and was told that steps have been taken in some cases to preserve land from development. McClellan said that in the previous week the provincial government placed a freeze on development of the province's off-shore islands.

There was also some discussion concerning right-to-farm legislation. Most people at the meeting were in favor of farmers having the right to do that they want, within reason, with their farm operations.

McClellan pointed out that the last royal commission on the land was completed in 1973. Many changes have taken place since then. The Island population has increased by about 15,000 since then while the farm population and number of farms have decreased steadily.

Farm acreage has also dropped, but the amount of acres in production has actually increased. Land in production is being farmed more intensely, he said.

More than half of all new single-family dwellings continue to be built on unserviced lots, using individual septic tanks and wells, McClellan said. There has also been steady growth in the number of cottages but, moreover, between 1973 and 1987, 3500 more cottage lots were created than building permits were issued, suggesting that many lots are being purchased for speculative purposes.

During the same period, tourism has increased from a $26-million to an $82-million-a-year industry.

Terms of reference assigned to the Commission require it to investigate: 1. major changes and the impact those changes have had in land owernship, land use and the quality if the landscape; 2. all existing legislation pertaining to land use, particularly in relation to ownership by non-residents; 3. the relationship of property taxation to land ownership to land ownership and land use; 4. land use and quality of landscape issues in relation to the proposed fixed link; 5. the relationship between the quality of landscape and government policy respecting roadside signage; 6. any matter or subject which the Commissioners may feel to be relevant to the subject of the inquiry.

Commissioners are: Doug Boylan, chairman, Gail Wellner, Elmer MacDonald and Hugh Robbins. Written briefs are required for the four provincial hearings and five community hearings. Written or oral briefs can be presented during the six informal hearings to be held across the Island following completion of the formal hearings.

APPENDIX B

Province of Prince Edward Island Tour

Observations and Impressions

Report of the Commissioners

During the month of August, 1989, three members of the Commission "toured" the Province, individually, in order to record their observations and impressions.

The members were given certain prescribed instructions, a copy of which is annexed to this report. They were asked to plan and complete their travels within certain guidelines but not in conjunction with one another (although they were free to ask another family member or friend to accompany them on their drives.) The guidelines were formulated so that each member would cover some 1,000 km of Island roads over a three-day period. Each tour would include one of the scenic drives as well as portions of the other counties. It was suggested that members should adopt a critical role: How would they perceive the Province if they were a first-time visitor with an eye for flaws? If they were escorting visitors on a tour, what would they point to with praise and what would cause them to flinch with embarrassment? Above all, members were encouraged to observe the conditions in light of the comments made at our public hearings.

To enable members to record their observations and impressions, each was provided with a log book for draft notes and an extensive questionnaire to be completed from their notes once their touring was finished.

The details do not represent findings of the Commission itself, since they may be reflective of only one member. But the details, when viewed collectively, do show certain patterns. Moreover, the observations and impressions record various strengths and weaknesses: it may be useful to present findings in some depth so that the positive can continue to be accentuated and the negative corrected.

Municipalities:

Each of the Commissioners were assigned one municipality and asked to visit three others in different counties and record their observations. The assigned municipalities were Charlottetown, Summerside and Georgetown. The municipalities selected by the Commissioners in their reports were: Montague, O'Leary, Bunbury, Alberton, Hunter River, St. Peters Bay, Kensington, Borden and Rustico.

In Charlottetown, the Commissioner was pleased to note the old Canada Packers site had been cleaned and fenced but there were negative comments in respect to litter in the downtown and entrance areas. Signage was the subject of adverse comments with no signs to show the way to the Trans Canada or the Tourist Bureau from the east.

Summerside was criticized for weeds or litter around downtown areas, an absence of trees and flowers along the main street and "fairly congested" traffic, as well as poor signage and commercial facades along the main thoroughfare. "Summerside has an 1857 building on Water Street which could be restored", noted this report. Some businesses, such as Hyndman & Co. and National Bank, were seen as having "good signs" and "good facades".

Georgetown was given praise for "generally well-maintained buildings with trees along the main street and flowers in front of private homes". The main street was "reasonably" well kept although vacant lots were characterized by weeds.

Montague was commended for the "evidence of civic pride in heritage buildings and some new buildings in a traditional style" but main street traffic congestion was noted. The Brudenell entrance (a "strip" of fast food signs) was a detraction in a community otherwise described as a "clean town [with] good signage - crosswalks - flowering plants; trees; clean river."

In O'Leary, one Commissioner found the Knutsford approach "pleasant with neat ribbon development" but the Unionvale approach gave a negative impression. Residential sections within the community were given praise but the downtown was seen as "cluttery".

Bunbury was seen as a "bedroom community of lovely homes" that, unfortunately, gives way to strip development in places. Better planning during early growth stages would have been a positive step for the community as a whole.

The Commissioner who criticized Summerside so sharply was much more positive about Alberton, Hunter River and St. Peters Bay. Alberton was seen as "rather pleasant overall with a 'lovely hospital' and a large water pond near the centre". Only the government building on main street came in for criticism ("unsightly").

Hunter River was seen as a "quaint, attractive village with great natural features". The "blend of past and present" was noted. The report lamented that "street scape" suffers because the main street is a major highway thoroughfare.

St. Peters Bay was seen as a "rather attractive little village" with "lovely churches" and "nice flags and centre store". On the negative side, a messy entrance from the Kings By-way, unpainted buildings and a "bad corner [that is] poorly marked" were noted.

Kensington leaves the impression of a "busy town" with much congestion of traffic at its central intersection. Ribbon development and the need for a facelift on Front Street and Broadway Street were cited as negatives. It was "not a clean looking town in the business sector".

In Borden, the aftermath of an earlier effort to improve appearances by building pressure-treated wooden planters was noted "but now you see dead shrubs and weeds in some". The report noted that "This is the entrance to the province and sets the scene for first impressions. Town boundaries cover a small area and council has no control over [the] area people assume is within the town. Needs careful planning to beautify and it should be a provincial priority".

The Commissioner who chose to report on Rustico was not impressed. "Rustico is a tourist concentrated area and the typical fishing village image should not be from yesteryear but reflect the age we live in. There should [be] tidy, well kept residences and businesses to reflect the image we wish to present of our fishing communities. The Creek has [a] deplorable appearance where prosperous fishermen are doing business and from which fishing charters leave daily. One "cottage" which I understand is lived in by people from out of province is on the beach and a pile of junk".

Ribbon Development:

The Commissioners were asked to identify what they felt to be "three of the worst examples" of ribbon development, describe whether it was commercial or residential, whether it was adjacent to active farming and whether there was driveway access onto a major highway.

One report named as the "3 worst examples of ribbon development": Brackley from airport to beach, Charlottetown to Meadow Bank and the Kinkora Road." The Commissioner found these to be the worst as "good agricultural land and lovely views [were] both spoiled by strip development". "It [ribbon development] must be stopped. All 3 counties have massive areas of strip development. Zoning for residential should be considered."

A second report named as the "3 worst examples of ribbon development": (1) Route 21 from Mount Herbert to Fort Augustus. (2) Sturgeon on 17 West which "has driveway after driveway in a 10-km. stretch" and (3) North River at the traffic lights (routes 1, 248 and 225). On the Mt. Herbert to Fort Augustus section, the Commissioner found 7 driveways onto the road as it went up one hill and another 8 driveways near Mermaid with 22 more driveways before Glenfinnan. The Commissioner found these examples to be the worst as "they contribute to traffic problems on the main highways leading to and from Charlottetown at the Hillsborough Bridge and North River Road." Moreover, "it seems to just 'happen' without any planning."

Cottage Subdivisions:

The Commissioners visited and reported on a total of 17 cottage subdivisions, divided among counties and between the north and south shore areas. These cottage subdivisions were identified as:

Thunder Cove
Hebrides
Seawood Estates
Fernwood
Unionvale
Hampton
Summerside
West River Causeway (south) subdivision
Fortune Bridge (north side of river)

Skerry Lane (near Seacow Pond)
Warren Cottage Development (Monticello)
Halpen Road (near Rustico)
MacIvors Point (near Victoria)
Route 12 (near Mill River)
St. Peters Harbour
MacDonald's Shore (Route 142, near West Cape)
St. Andrews Point (Route 17)

The Commissioners were asked to report on the condition of the roadway providing access to the cottage subdivisions they observed. Many of the subdivisions were found to be serviced by sub-standard roadways. Although there was one partially-paved roadway, most were dirt roads. Some of these had been augmented by gravel but at least one-third of the subdivisions were characterized by very negative commentary on road conditions. "Dreadful" said one Commissioner in relation to two subdivisions. "Terrible - car dragging", wrote another Commissioner in relation to one of the subdivisions viewed. A fourth description was equally negative: "Narrow, one lane poorly maintained, grass natural - no shale, gravel; rough in centre". "Poor - dirt" and "unpaved and bumpy" were the answers provided in relation to two other subdivisions. Only one roadway was described as "excellent" and a second as "good".

The number of cottages found in each subdivision varied considerably. The smaller subdivisions were found to have as few as 2 or 3 or 4 seasonal dwellings, while larger ones contained upwards of 40 or more summer residences.

Five of the cottage subdivisions contained five cottages or less. Four of the subdivisions contained six or more cottages but not more than 10 cottages. Four of the subdivisions were found with at least 11 cottages but no more than 20. The balance of the subdivisions (3) each contained 30 or more cottages; the largest had some 43 seasonal dwellings.

There was a considerable variation among cottages even within subdivisions. The cottages in four subdivisions were characterized as "modest", "very modest" in a fifth and "modest and unattractive" in a sixth. In two subdivisions they were characterized as "elaborate" and "very elaborate and expensive". Nine subdivisions were seen as having a "mixture" of some type. The contrast was particularly pronounced in some of the subdivisions that combined modest and elaborate cottages. "Some quite ancient - small shack-like [cottages] [with] two or three quite nice ones [on poor drainage land]", one Commissioner said of one such subdivision. Just how modest and how mixed became apparent in one report where one Commissioner described one of the largest subdivisions as "mostly modest - some trailers, some tents on staked lots".

When asked to identify whether or not the subdivision had utilities, the Commissioners identified 16 as having electrical power and 13 as having telephone service.

All of the subdivisions were located with water frontage nearby. Five of the subdivisions had sand dunes nearby and four were near woodland. Five of the subdivisions were located near a swamp or marsh.

Asked if any of the cottages were built on or near dunes, one Commissioner reported that one subdivision was "right on [the] shore but no dunes". In a second subdivision, the 11 cottages were "all on or near bank [on coastline]". A second Commissioner answered the question in the affirmative with respect to one subdivision and added, "One cottage is built on the dunes" The third Commissioner answered the question in the affirmative with respect to two cottage subdivisions.

Thirteen of the cottage subdivisions were located on or adjacent to agricultural land. In commenting on this, one Commissioner wrote: "The major concern with this area is good agricultural land being used for cottage development. The subdivision is respectable. Many cottages have been simply placed in designated lots in rows stretching back from the ocean front at least 3/4 of a mile. The entrance is peppered with real estate signs - all different sizes etc. The developer simply took the fields and subdivided it. Therefore, trees only appear where there were hedgerows. One helpful suggestion to improve entrance and general appearance of all cottage subdivisions is to have a sign with the names of those who reside there and a nicely grassed area."

The Commissioners were asked if each subdivision was "attractive". Negative answers were given with respect to 12 of the subdivisions. "Crowded" was given as the reason for finding one subdivision with 16 cottages unattractive. "No pattern for building" resulted in a poor rating for another subdivision. The "small lots" was cited in regards to another one.

Only four of the subdivisions were rated as "attractive" or given positive comments. "Large lots" was seen as a good feature in one subdivision. Another, seen as attractive, had cottages located in the woods. Two of the cottage subdivisions received considerable praise in the reports. One Commissioner found the Hebrides, one of the largest cottage subdivisions, "well planned and well maintained" with nice features (miniature golf course, tennis courts, recreational hall and swimming pool) incorporated into it. The subdivision was located in a good place for a cottage subdivision, most cottages "would have an above-average cost" and the area was well accessed by a roadway of crushed rock.

Asked whether or not the cottage subdivision blocked a landscape or scenic view, the Commissioners identified three that did so. In one other, the cottage placement blocked the landscape from one another, while in a fifth cottage subdivision the Commissioner felt further building would block a landscape or a scenic view. When asked whether the cottage subdivision enhanced the view, the answer was negative in respect to 14 of the subdivisions. Two of the subdivisions, both of which had been among the four identified as "attractive", were seen as enhancing the landscape.

The Commissioners were asked for general observations and impressions with respect to cottage subdivisions. A number of comments were directed at planning inadequacies. "A poorly designed strip of cottages along a beautiful shore overlooking wonderful scenic vistas", said one Commissioner in regard to a small cottage subdivision in Prince County. "The epitome of inappropriate planning...poorly laid out... lots small" were among the adverse comments in relation to a Queens County cottage subdivision, while one in Kings County reflected "poorly designed plan overlooking beautiful beach and north shore" where cottages also had an "unattractive design".

Other comments centered on the number of cottage subdivisions that attempted to limit the public from beach access. Notes on three of the subdivisions made reference to limitations of this nature. The road to the shore in one north shore cottage subdivision was signed "cottage owners only". The access to the beach serving a large Prince County subdivision was signed, "Caution, Private Cottages" and "dead end". A Queens County subdivision of less than a dozen cottages, accessed by a "dreadful" road, was signed with "no trespassing" messages.

Scenic Views:

The Commissioners were asked to identify the location of what they each considered to be scenic views, to name the elements that were present that made them like the view and to comment on any obstacles that detracted from the enjoyment and/or improvements that could be made.

On the Lady Slipper Drive, the Commissioner assigned to that tour cited North Cape as a scenic spot for its "fabulous view".

This Commissioner also commented on the combination of high cape land and water, finding that "from Burton to Miminegash was very beautiful - high banks - water below - undulating fields leading to shore line."

Another Commissioner identified Route 14 from West Point to Cape Wolfe ("scenic drive with cliffs and gulf on left and farms (dairy) on right. Farming done right to cliff edge.") as a scenic view.

In Queens County and eastern Prince County, a number of areas were identified as scenic views. One Commissioner identified the "rolling farm land" of Wheatley River, New Glasgow and Hunter River and said "I love that area"...long view of well-farmed land stretching as far as eye can see with no weeds or dilapidated buildings...Queens Co. from Winsloe through to Cavendish was most appealing to me. Winsloe North was very attractive."

Another Commissioner felt the particular features that made up a scenic view as "water, rolling hills, wide landscape [and] colors: red, green and blue contrasts are a visual feast."

This report criticized the lack of areas "to pull over for picture taking or to stand and stare." Six areas in the central part of the Province that could benefit in this way were identified: (1) Meadow Bank with a water view of the West River; (2) Cumberland where Northumberland Strait and St. Peter's Island can be seen; (3) Malpeque, where one can observe farmland to the Bay; (4) Darnley, where there should be a look-off at Sea View to enjoy the rolling land and water; (5) French River and Stanley Bridge, both of which also have a good combination of farms and water.

Other scenic views identified in this report (in addition to the Route 14 between West Point and Cape Wolfe, already mentioned) were: (1) Route 225 (Kinkora Road) where there are rolling hills, farmland with a spruce-forested backdrop, winding steams and well-kept homesteads; (2) Bedeque/Read's Corner with a view of the Summerside Harbour; (3) Mount Mellick on Route 1A where Pownal Bay is visible as far as Point Prim; (4) Route 2 between Hunter River and Kensington where there is a "beautiful crosscountry drive through rolling hills, well-kept farms, churches and community buildings on [a] good road"; (5) Route 22 at Pisquid where there is a "panorama of hills, spruce trees, tidal river"; (6) Route 2 at Midgell where there is a "spectacular view of St. Peters Bay; (7) Route 2 at St. Peters; (8) Route 313 at Greenwich, both of which provide "nice homes along road and water view of St. Peters Bay"; (9) Fortune, where there is a "beautiful view of Rollo Bay"; (10) Route 24 at Glen William, with "glimpses of the Strait and N.S."; and (11) Route 347 around Panmure Island, where there are "views of Cardigan Bay and St. Mary's Bay". The Commissioner also enjoyed the clay road from Route 17 down to St. Andrew's Point, with "no ditches, tree lined - no signs, just a beautiful heritage road."

In Kings County, one Commissioner named Launching wharf as a favourite scenic view. "I like the fishing ports with the red cape land and Launching overlooks Spry Point. I like small farm fields with water overlooking sea and capes. Souris West was spectacular during a recent storm - beautiful "breaker waves"." The Commissioner designated to tour the Kings Byway named St. Peters as "the" scenic view on this tour. The report also asked for pull-over areas. In respect to St. Peters in this regard, the Commissioner wrote: "Evidence of mussel farming [in the] Bay. There could be a stop-off location where one might take pictures and read an explanation of what those white things are bobbing in the water. One tourist thought [the] marked areas [were] for boating competitions. Such [an] explanation would also promote the industry. Another area [for pull-offs] [is the] Stanley River New London Bay [area]."

Other scenic views identified by this Commissioner were: Lower Bedeque where Bedeque Bay and Holmans Island can be seen; Springbrook, where New London Bay and sand dunes are visible; Park Corner, where the Gulf and cliffs of Cape Tryon can be enjoyed; Stanley Bridge, overlooking New London Bay and the sandhills; Route 224 at New Glasgow, overlooking the village; and the Rattenbury Road, where mussel farming on the Stanley River can be observed and where a pull-over with signage could explain the mussel industry and the white buoys in the river."

When asked what features caused a spot to be labelled as a scenic view, this Commissioner responded with the adjective "panoramic" and added, "Rolling landscape - view of offshore islands - view of red cliffs, water and countryside." The Souris area was cited as a good example.

The lack of pull-offs meant "too many people do not get to enjoy [scenic views] because there is no pull-off area, where there could be litter cans, [and a] picnic area."

Waterways:

The Commissioners were asked to note the condition of waterways and, in particular, to observe if there were trees nearby and whether there was any evidence of fishing or pollution.

One Commissioner commented: "We never saw a sports fisherman on our trips. Most of the rivers and streams had no name sign or any care about them." "Streams all along our route in 3 counties [were] clogged and slow moving." Trees were "old" and "unthinned". There appeared to be widespread pollution.

A second noted: "All waterways noticed were in poor condition. An exception could be made to the Tyne Valley area where work has been done. Evidence also [that] work [has been] done on Morell River." The waterway at Ives Mill in the Tryon area was mentioned as being in poor condition with trees falling into the waterway and with weeds, grass and silt polluting the stream. The waterway adjacent to the Rattenbury Road in the North Granville area was given as a second example of a problem: "no maintenance since [the] dam [was] built - trees growing - stream below it mossed over."

Only one of the three reports was more positive about conditions along waterways in the Province. The report considered the Morell River and described it "A most successful clean-up project done on this river." The Commissioner commented favourably on Lairds Mill, Cranes Bridge, Indian Bridge and Larkins Pond, as well as the Morell River at the village of Morell itself.

The report noted that waterways observed on Route 223 were small, tree-belted and fairly free of algae. The headwaters dividing the Naufrage River to the north and Fortune to the south were tree-lined when observed around Route 309, although the area was "swampy".

This Commissioner also looked at the Barbara Weit River at New Annan and commented: "lots of sludge west of bridge - no smell at low tide. River flushing well east of bridge. Water coming much cleaner than Fall of '88. Much improved." (The latter comments refer to observations the Commissioner had made a year earlier, before being named to the Commission.)

Fishing Wharves:

Each Commissioner was instructed to include in his or her tour a total of six fishing wharves, half of which were located on the Gulf of St. Lawrence and the balance on the Northumberland Strait. Choices were to be selected to provide samples from all three counties in both north and south shore categories. Accordingly, single reports were made on Malpeque Harbour, North Rustico Harbour, West Point wharf, Savage Harbour, Abrams Village wharf, New London wharf, Stanley Bridge wharf, Egmont Bay wharf, Seacow Pond, Tracadie Harbour, Nine Mile Creek wharf, and Launching wharf. Overlapping choices produced two reports on the wharves at Victoria, Naufrage and Graham Pond.

Many of the fishing wharves received glowing reports: Malpeque Harbour, West Point wharf, Savage Harbour, Abrams Village wharf, New London wharf, Egmont Bay wharf, Seacow Pond wharf, and Tracadie Harbour.

Others did not fare as well. The harbour at North Rustico was criticized because of the weeds that were so obvious between the wharf and the town and because one section of the wharf was in need of repairs.

The wharf at Stanley Bridge was seen as hazardous: "A poor surface area around old wharf area. Not that well designed. A dangerous access. A steep incline. Would question the safety in heavy traffic area. The seafood outlet causes additional traffic", noted one Commissioner's report.

Nine Mile Creek offered a spectacular view of St. Peters Island and Keppoch but the wharf area was "generally messy and unkept looking", the entrance was "not attractive" and the surface of the area of the wharf was seen as "dangerous, unsightly and slippery when wet".

Launching was described with great praise ("most attractive visual experience") but the signage was severely criticized: "no sign to get in", "poor directional sign" and "dangerous stop sign. Not clear to re-enter [Route] #311. It needs warning about the stop sign."

The two reports on the wharf in Victoria were both critical. One Commissioner found the wharf "cluttered", "not easily accessed". The "weedy grounds around the lighthouse" were also cited for negative commentary. A second Commissioner was even more explicit: "was not impressed with location of bait sheds. A lot of fishing equipment laying around. Sail boats and fishing boats on crowded wharf. A congested and untidy wharf area. Traps lined on either side of highway. Cars parked on wharf for restaurant not safe. Needs to be restructured", the report noted.

At Graham's Pond, one Commissioner noted "roadside litter" on the road to the wharf. The other report had a mixed reaction to this wharf. "Baitsheds well kept in one area but evidence of neglect in other area - doors off - windows broken. Paved road to wharf but rough and bits of debris on the clay area around [the] wharf. Wendell Graham establishment excellent. Many traps just tossed into piles. Slip excellent."

There were equally mixed reviews for Naufrage. "Very tidy", wrote one Commissioner. "Generally very good state of repair of storage sheds. Impressive fishing wharf. Well protected for fishermen. Slip allows easy access to water." Another commissioner was not prepared to be so positive: "Unclear signage from [Route] #308. No directional sign to wharf. Irish moss plant before wharf was messy. Good view. National Sea building dominated wharf and is in poor condition. Wharves were covered with lobster traps....Boats tied up were very attractive. Good view of beach. Wharf is in good condition. Lighthouse adds visual colour to wharf scene."

(In commenting on these 15 wharves, no one Commissioner was full of praise for all of his or her choices, nor was any single Commissioner totally negative. One Commissioner was positive about three of the six and either negative or "mixed" in commenting on the remainder. Another was positive on three and negative on three. The third was positive on three, negative on one and "mixed" on two.)

Provincial Parks:

The Commissioners were asked to include in their touring schedule visits to a number of provincial parks per county. This resulted in reports on Campbell Cove Provincial Park, Red Point Provincial Park, Green Park, Devil's Punch Bowl, Linkletter Provincial Park, Victoria (Provincial) Park, Jacques Cartier Park, Tea Hill Provincial Park, Crowbush Provincial Park, Brudenell River Provincial Park, Cabot Park, Mill River Provincial Park and Panmure Island Provincial Park. Two of these (Linkletter and Victoria) were visited by two members.

The Commissioners had words of praise in the 15 reports dealing with various provincial parks. However, 10 of these reports also contained negative commentary.

High praise was reserved for Mill River, which was described as a "jewel". Cabot Park, Red Point and Campbell's Cove received many compliments and the Blueberry Festival underway at Green Park was cited as "impressive".

Linkletter, which was the subject of two reports, conveyed mixed impressions. In one, the park was found to be "quiet clean", the "washrooms perfect" but the "beach [was] deplorable, [with] seaweed three feet deep". The landscape was not appealing: the report found "Young growth of trees, a few flowers in a flower bed. Flat terrain offering little contrast to beautify the area. Entrance lacks character." A second Commissioner found that "[the] whole park is flat - few trees - nothing natural about it. Looks like a city subdivision on beach... I was very disappointed with the flat unattractive land site picked for a park. No privacy for campers between hook-ups. - No nature trails etc...whole park appears to be surrounded by weeds!" In the few days that had passed between the first visit by a Commission member, the washrooms had apparently deteriorated to the point where the second report called them "disgustingly depressing" ("even paint all over toilet seat", "1 only shower which was [in] dilapidated repair - smelled").

Victoria Provincial Park (in the community of Victoria) was also the subject of two reports. Both praised the park except for its lack of trees. "No shade - must be very hot at times", wrote one Commissioner who found the park otherwise "extremely clean" with "good parking". Another Commissioner found the park "well maintained" but "a bit barren"..."there was no shaded areas to sit out of wind or sun".

The Devil's Punch Bowl Park was praised for being a "nice location away from the water with some historical significance. An area where you can relax or stroll through the woods". The only note of concern sounded was that the "entrance could be improved".

Panmure Island offers a "fabulous view from dunes and beach". The park was criticized for having too few containers for garbage. It was noted "the canteen on the beach is right on the dune. There are a lot of foot paths over the dunes to the beach."

The Jacques Cartier Park at Kildare Cape received mixed reaction. The park was found to be "on [a] scenic beach" and washrooms were "fairly decent" but it had a "barren non-creative campground". There was "no privacy for individual campers", "no flowers" and trees were small.

Brudenell River Provincial Park presented a problem: the Commissioner found the Norton campground but not the Brudenell one. Better signage was suggested.

At Tea Hill Provincial Park, the visiting Commissioner found no flowers. The washrooms were "smelly", "dirty" and "disgraceful". Picnic tables needed paint. The park needed to make better use of woods with a walk trail and an "observation area for wildlife".

Washrooms were also a problem at Crowbush Cove Provincial Park, but the park, overall, was "nicely done. All sorts of trees." The walk access to the beach was praised as well as the large parking lot. Good playground equipment was noted. "There were a lot of weeds on [the] road to [the] beach", the report indicated.

Tourist Attractions:

The Commissioners were asked to note the landscaping and external appearance of any "tourist attractions" they observed.

One report did not contain any comments in this section.

Another report mentioned Rainbow Valley and Green Park (and the Yeo House), both of which were rated "excellent".

The final report mentioned both "motels" and "dining" facilities by saying "most [were] very ordinary with little effort made to enhance [the] building".

Cavendish:

Members were instructed to include the Cavendish area on their itinerary and visits were recorded on August 11, 15 and 16, 1989. Traffic conditions were heavy on Tuesday, the 15th, and the area was crowded. Otherwise, traffic conditions were described as "steady" and "good", the area was not crowded and parking was available.

Two members found inappropriate development in the area and both named King Tut's Tomb as an example. Other examples cited by one member included the Enchanted Castle and the Sandspit. Another Commissioner found Capt. Barts to be inappropriate.

Asked for suggestions for improvement, one member suggested a slower speed zone and/or a wider street from the corner to the Boardwalk, together with flowers along the side of the road. Another felt there was still a possibility for development but sewage, water, traffic and visual effects must be considered. Asked for their observations and impressions on Cavendish, one Commissioner commented on the excellent new visitors' bureau but lamented that Cavendish itself was overcrowded with cheap attractions. This Commissioner noted the presence of "beautiful farms along the road which I took to Cavendish". Another Commissioner noted that the "only tourists in quantity we saw on our scenic tour were at Rainbow Valley, the Sandspit and the Boardwalk on Route 6." A third Commissioner wrote:

"Some of the tourist attractions did not appeal to me but the people I spoke [to] ...were more than pleased. The things that are there by their nature draw that type of person. The area must be watched closely so that a problem is caught before it is out of control."

Directional Signage:

The Commissioners were asked to assume they were out-ofprovince visitors and, on that basis, determine whether they could find their way around the Province.

The Commissioners found they did not have to make such an assumption in order to determine the adequacy of directional signage.

The Commissioner assigned to tour the Blue Heron scenic drive had to go to the Tourist Bureau to find its "starting" and "stopping" points - and left with no satisfactory answer. He identified several points where signs were confusing or totally absent on the Blue Heron Drive ("confusing sign to trail at Cornwall - people might easily take road to York Point"; "no Blue Heron sign at junction of T.C.H. and Tryon Route 10"; "no Blue Heron sign on way out of Victoria"). Asked if one could find the way easily if not familiar with the area and/or route numbers, the response was: "I think so, with a map."

The other Commissioners did not fare quite as well. The Commissioner assigned to the Kings Byway answered the report's question "Did you get lost or confused at any time?" with an affirmative; while the Commissioner who toured the Lady Slipper Drive reported: "Confused at Nail Pond and turn-off to North Cape. Had to ask directions to West Point lighthouse."

On the Kings Byway, directional signs on Route 2 indicate the scenic drive proceeds through York, while the official highway map included in standard tourist literature for the Province indicates the turn-off from Route 2 is made in Bedford.

Elsewhere on their journeys, the Commissioners found much in need of improvement in the matter of directional signage. "One suggestion [is that] at intersections when turning be able to identify [the] route-by-route signs immediately. The same applies for scenic drive signs." "At intersections directional signs should be more descriptive", said one Commissioner who found a shortage of information was provided.

Asked if there were enough signs, the Commissioners said "no" in respect to all three counties.

Queens County was identified as being "barely adequate but best of the 3 counties" in regards to directional signage by one Commissioner. Another acknowledged that, although the question "did you get lost or confused at any time?" was answered in the negative, it was "only because we knew the area".

One Commissioner felt the "Acadian areas of Prince County have been more aware and have identified some of the smaller special areas within their communities". In Prince County there were "more individually-owned signs to identify properties on sites."

Directional signs were also criticized for their appearance and/or condition by one Commissioner, who noted "uprights in poor condition, weeds all around; rivers not identified by sign (eg. Wilmot River): Lady Slipper sign not visible until we passed turn-off; sign to Summerside at Reads Corner needs paint; Searletown sign was smashed."

Roadside Advertising:

The Commissioners were asked to assess roadside advertising on the assumption they had no familiarity with the area, even if they knew it well. On this basis, they were asked for commentary on whether signage was adequate in terms of information and visibility, whether it would be adequate under poor visibility conditions (such as night-time driving, poor weather or when there was foliage limiting visibility) whether roadside advertising was limited to provincial signs and whether signs detract from the landscape.

The Commissioners noted there was roadside signage for commercial establishments and real estate. Two of the Commissioners noted examples of election posters placed along the roadsides in all three counties. One Commissioner observed the prevalence of real estate signs around cottage subdivisions and the quantity of advertising signage on the Brackley Point Road and in the Cavendish area. Another cited Stanley Bridge to Cavendish in this regard. The proliferation of private signs in French River prompted one Commissioner to count six on one post and nine on a nearby post, both along Route 6.

Mobile signs were also cited, as were poor quality "homemade" signs. One Commissioner found a "home baking sign" on Route 210 that was a "large sign right on the shoulder of the road - hard to read and placed [while the vehicle is] coming to a turn". Asked if signs detract from the landscape, another Commissioner referred to "some handmade signs especially [those advertising] "potatoes for sale" [at] roadside stands."

Confusing groupings was cited by a second Commissioner this one found a number of these on the Lady Slipper Drive, including 9 signs together near Mill River. There were an equal number found at McCrady's turn-off on Route 19 in Queens County.

Asked if signs detract from the landscape, one Commissioner indicated that "small ones don't". An example of signage seen as a detraction was a high ad for building siding in Mount Mellick on Route 1A, described as "a giant billboard". The report described roadside advertising as "a necessary evil".

Another Commissioner found signs blocked by foliage in some areas.

"Real estate signs posted on government signs and electric and telephone poles are a detraction", wrote one Commissioner who found roadside advertising "detracts from landscape".

As a commentary, the report added, "A suggestion that instead of businesses erecting their own signs to indicate their specialty, have a uniform color and style for all like those used on highways only larger. This would eradicate the unsightly appearance that we see with so many varieties and colors that mar the appearance of the area."

The Commissioner gave a number of examples where provincial signage was placed in such a way that a good view of the landscape could have been improved by better placement of signs.

Poor and inadequate signage were also noted in places. The Commissioner who toured the Lady Slipper Drive saw no signs in relation to two local museums, both mentioned later to the Commissioner in conversations with people in the areas. Poor signage at Winter Bay Park detracted from an otherwise pretty spot.

The groupings on provincial signage in Queens County were felt to be better by one Commissioner who added that "uprights needed paint" and the signage at Stanhope detracted from the landscape.

No Trespassing Signs:

All three of the Commissioners indicated they saw few "no trespassing" signs. A few protecting residential property in Prince and Queens Counties were noted by one Commissioner. Another noted that most "no trespassing" signs were posted for a valid reason such as a wildlife management area, an airport or farmed land. The most widespread use of signage which prohibited trespassing or which otherwise advised of private ownership seemed to be in the entrance areas to cottage subdivisions.

Vacant Land:

The Commissioners were asked if they found locations with a high proportion of vacant land and, if so, whether any of these locations would be suitable for other uses. All reports concurred in naming portions of Kings County. One report singled out Route 16 (which is a portion of the Kings By-way between St. Peters and East Point and from East Point to Souris.) A second report named the same area ("Selkirk, St. Charles, Greenwich") but added: "Some land should be idle as a sort of buffer to over-development. Reforestation would help conserve soil and groundwater supplies." The third report named Kings County on the Kings By-way. "These areas are the places to put large amusement areas". The Commissioner noted, in reference to a question seeking observations and impressions on vacant land: "Lots and lots of it. Sad, sad, sad."

Trees:

The Commissioners were asked to observe a number of aspects regarding trees in the Province including any area of forest clear-cutting without cleanup or roadside tree belts alongside waterways, the condition of hedgerows and the prevalence of large proportions of dead or dying trees.

One Commissioner noted only that tree belts along streams were not well maintained. Exceptions were found in Morell and Montague.

Another noted clear-cutting in Lyndale along Route 210 (but re-toured the route a few days later and found a cleanup underway). The report cautioned that the Mill River is in danger: "Mill River could become polluted - there is much cottage development on both banks, and farming right to [the] shore is practised. Algae present on golf course ponds now."

A number of clear-cut areas that were only partially hidden from view were noted ("cutting on Baldwin Road ([Route] 22.) with trees along road and birch trees left"). Kilmuir and St. Charles were cited as other areas where clear-cut had been cleaned up and some tree belts had been left to hide the area.

This report found an absence of hedgerows: "Large fields are the norm." It noted the presence of "alders along small streams". Tree conditions were generally positive: "Healthy trees. Spruce areas seem to be making a comeback from budworm infestations." "A goodly number of private and provincial woodlots and reforested areas."

The over-maturity of trees was observed by one Commissioner. The density of trees along streams was also noted: "All streams were closed in with trees, no discernable belts, and evidence of debris in streams."

Soil Erosion:

Two of the Commissioners identified several locations where hedgerows had been removed over a wide area. These included Rollo Bay West, Kinross, Bellevue, Millview, Tryon and North Wiltshire.

One observed that "most areas had poor or minimal hedgerows". Another noted that farms along Highways 2 and 225 were not contoured. "Row and grain crops were visually vertical with the hillsides".

When asked to identify locations where terracing, ground cover, buffers and other signs of soil conservation were obvious, only one example (Kinross, at the end of Route 210) was given. "Couldn't find too much anywhere", one Commissioner noted.

Road Conditions:

The Commissioners were asked to observe road conditions on their travels, particularly in relation to such problems as pot holes, shoulder washouts, guardrail problems, poor (or no) centre line markings, and detours due to construction or otherwise.

One Commissioner found "excellent roads with no traffic congestion" except for a rough patched road (Route 6) on the Kings Byway and traffic congestion in the Cavendish area ("Route 6 from Stanley Bridge to Cavendish - wet day - traffic back-up from lights to Rainbow Valley. Road narrow for traffic flow.")

A second Commissioner commented on the dangerous driving conditions for cyclists, particularly on Route 19A in the Fairview area where the road shoulders were grassy and the road was narrow and bumpy. "There were always a lot of bikers [i.e. cyclists] near parks and campgrounds. We (or the bikers) were fortunate that we met or overtook them in low traffic areas."

The third Commissioner felt "highway safety is a problem" and cited two areas of concern: flagging ("really bad") and stop sign placement "no stop signs early enough to tell driver that he is entering major highway, eg. Route #2")

Ditches:

The Commissioners were asked to observe ditches for signs of soil erosion and to comment on the aesthetics of ditches on their tour.

One Commissioner indicated that the tour took place during extremely dry weather so no erosion was visible. The report cited a preference for ditching where grass and wild flowers were visible "with [the] alders cut back".

A second Commissioner noted that it was "difficult to evaluate to what extent soil erosion took place but evidence of siltation in rivers, streams and creeks would lead you to believe it is a major problem that needs to be addressed".

This report cited a number of examples where ditches were particularly unsightly: "Naufrage - shrubbery in ditches cut and left. Route 131 - Birch Hill - bushes in ditches. Arlington shrubbery in ditches not cleared away. Crapaud - shrubbery in ditches outside village on Westmoreland Road not cleaned up."

The third report was highly critical of ditches throughout the Province. "They are full of weeds, unsightly shrubs, alders etc." The Commissioner called for a "massive clean-up and weed kill".

Weeds:

In general, the Commissioners found weeds to be a major problem throughout the Province.

Asked to identify locations where weeds detracted from the surroundings, one report stated simply "Everywhere". The Commissioner added: "Fields, ditches, roadsides filled with weeds. ...It is a province of weeds."

The other two reports also showed concern but to a lesser degree. One noted that "what farmers call weeds, others call wildflowers". Still, this Commissioner felt that the presence of weeds in the traffic circle at Bedeque where Route 1A meets Route 112 was one example where weeds were a detraction from the landscape. Another also commented adversely on this area, observing that the wild pumpkin weed had infested hedgerows and all trees in the Lower Bedeque region of Route 112. Golden rod, particularly in ditches and uncultivated fields in both Kings and Prince counties were cited as more examples of weeds that do not add to the surroundings. "It would appear that there would have to be a unified approach by Government and the private landowners if the weed problem is to be brought under control and still reduce the use of chemical herbicides", this report noted.

Roadside Litter:

The Commissioners were asked to watch for roadside litter and to record their observations and impressions.

Overall, roadside litter was not found to be a big problem.

One Commissioner noted three problem sites, all of which stemmed from fast food containers. Two of these sites were within the City of Charlottetown. This report concluded: "The roadsides were very clean. When we stopped and got out of the car, small pieces of garbage could be seen in the deep grass. Chip bags and pop glasses (cardboard) were in the majority.... Litter is worse in [the] .5 km. radius from canteens, where food is taken out, taken along, then the containers "ditched"." Another Commissioner noted five areas of concern, two of which were characterized by fast food containers. This report concluded: "It was difficult to observe any litter in ditches etc. because of the time of year and the foliage. I would suggest fast food outlets could contribute to improving the litter situation by including no litter advertising in their promotion material".

A third Commissioner identified weeds as a far greater problem than roadside litter. "We were astounded by [the] number of weeds and weed-like shrubs in all ditches and along roadsides in every area except Covehead, Wheatley River, Cavendish, Wiltshire area (i.e. areas of beautiful views and good farms)."

Old Car Bodies:

Members were instructed to include in their observations careful regard to the incidence of old car bodies. The instructions specifically asked that they pick a stretch of road (minimum 10 km.) in each county and complete a car body and "site location" count for each chosen stretch.

The general impression, summed up in the words of one Commissioner, was: "Although car bodies were noted in a few yards during the whole tour it was not a major area of concern."

But, specific areas of trouble spots were pinpointed in the report. Along Route 232 in a 10 km. stretch in the area of Lady Fane, one Commissioner wrote: "This area is a sad stretch to travel over because of ill-kept residences, discarded automobiles, fence posts serving no purpose, old buildings collapsed and junk piles in fields". Four sites of old car bodies were noted. One contained three abandoned vehicles while two contained two derelict cars each. The fourth site was a whole field containing an estimated 40 - 50 derelict cars, trucks and agricultural machinery.

Old car bodies in the Bedford/Tracadie area were noted by two Commissioners. Another problem location was identified along Routes 2 in the vicinity of Route 308 between Dingwells Mills and St. Charles where a total of 32 derelict car bodies were counted as easily visible from the main highway.

One of the worst locales for this problem, according to one Commissioner, was Route 17 in the Sturgeon area. Another location where derelict car bodies presented a problem was in the Unionvale to West Point section of Route 142 where four sites containing a total of 13 derelict vehicles were noted. Along the Blue Heron Drive a total of nine sites, including a partially fenced junkyard at Travellers Rest, were noted.

Dumpsites:

The Commissioners were instructed to view any dumpsites along their routes. A total of 9 dumpsites were observed, with 3 of these being inspected by two members. These sites were as follows:

Cardigan (2)
Tyne Valley & area
Central Lot 16 (2)
Breadalbane Container Site
Dingwells Mills (2)
St. Margarets
Lyndale
Summerside Regional Landfill Site
Millview

The Commissioners looked for concealment of the sites, control measures and surrounding litter. In general, they found the sites concealed from roadways. Control measures were usually quite minimal, although some sites were fenced and/or had posted hours of operation. At least one of the sites had a custodian. Surrounding litter was minimal. The Commissioners were especially pleased to note improvements at the Dingwells Mills site which had been observed from the main highway as most untidy when the Commission went to Souris for a public hearing earlier in the year.

Undesirable Uses:

The Commissioners were asked to note any gravel pits, asphalt plants etc. and whether there had been any attempt to hide these from roadways by trees or fences.

Shale pits in Scotchfort, Fortune, St. Georges, Union Corner and Harmony were named as examples of shale pits that were visible from the road without any camouflage or concealment. (Most, perhaps all, were abandoned pits.)

Obnoxious Smells:

The Commissioners were asked to record any examples of obnoxious smells found in their tours. None were found by two Commissioners. A third report made reference to an odour problem near a pig barn in Kilmuir.

Unsightly Property:

The Commissioners were each asked to indicate unsightly properties they saw on tours and to list what they consider to be the worst examples in this category.

More than half the examples given were on major arterial highways between Summerside and Souris.

Poor housing caused one Commissioner to make mention of a stretch of Route in eastern Kings. Two commercial properties on the Trans Canada Highway, both involving abandoned vehicles, were also cited.

The bottle exchange just east of St. Peters, was described in one report as "probably necessary but absolutely horrible to behold. Boxes and cases of bottles were piled in the ditch almost to the shoulder of the road." This Commissioner also rated one of the corners along Route 112 as "very unsightly". Although this report was not the one which cited this area for its weed problem (see section on weeds), the report found in this vicinity a "neglected, rundown barn, peeling paint on [a] picnic table in old school yard. Horrible corner. Warehouse abandoned." The Traveller's Rest automobile junkyard was described in one word: "terrible".

Other unsightly properties included residential properties in Arlington, Lake Verde, South Melville. A clutter of old car bodies and collapsed buildings on the County Line Road between Prince and Queens Counties was also mentioned. A final unsightly "property" was observed along the Mill River where, in midAugust, a snowplow was parked beside the road on Route 172!

Addendum

The Instruction Manual and Questionnaire prepared for the Commissioners in connection with this tour follows. (Portions of the Questionnaire have been "edited" to reduce the amount of space provided for answers in the original document in order to shorten the length.)

Province of Prince Edward Island
Observations and Impressions
Instructional Manual

Introduction

The tour requires each Commission member to drive one of the designated scenic routes in the Province (Lady Slipper Drive, Blue Heron Drive, Kings By-way). Which route will be assigned to the member ensures members go into areas they are less likely to be familiar with. In addition, members can choose two other tours in each of the areas/counties not covered by the scenic drive so that each member will cover approximately 1,000 km. of the province in total. To ensure members observe a range of the concerns raised in the presentations and balance their tours between more developed and lesser developed areas etc., there are guidelines on the routes to be selected.

Recording Observations and Final Reporting

Members will be supplied with forms on which to record their observations during their tours and final reporting documents on which to summarize their findings.

Final reports should be completed and submitted to the Commission on or before September 6, 1989.

Instructions

During each of the tours, members must observe and make notes on their locale, observations and impressions.

Without limiting your observations, members should consider and/or keep in mind the following:

(1) **Old Car Bodies.**

Members must pick a stretch of road in each county (minimum 10 km.) and note the distance and/or route number. A car body and "site location" count should be made for each chosen stretch.

(2) **Roadside Litter.**

Note location and type. (eg. household garbage, fast food, liquor bottles, dead animals etc.)

(3) **Dumpsites.**

Note location and whether public or "private". Note whether "hidden" from road (trees, fence). Not presence (or absence) of litter adjacent to dump site. Note presence (or absence) of dumpsite employee or other regulation (eg. dumpsite locked).

(4) **Trees.**

Note any area of forest clear-cutting without clean-up or roadside tree belts. Note the presence or absence of tree belts along any streams, lakes, rivers etc. Note condition of hedgerows (in poor shape, obvious removal). Note forest areas where there is a high percentage of dead trees or of trees with many dead limbs.

(5) **No Trespassing Signs.**

Note location---are these likely to block beach access? Or are they to protect wildlife habitat? Otherwise?

(6) **Roadside Advertising.**

Assume you have no familiarity with the area, even if you know it well. Is signage adequate in terms of information? visibility? Would it be adequate under poor visibility conditions such as night-time driving? poor weather? drivers with vision problems? foliage that limits visibility? is roadside advertising limited to provincial signs? What other signs were there (location, type)? Do signs detract from the landscape?

(7) **Directional Signage.**

Assume you are an out-of-province visitor. Can you find your way around? Are there adequate and sufficient directional signs? Route number signs" How do these blend with the landscape?

(8) **Scenic Views.**

(Location, type) What elements were present that made you especially like the view (water? shoreline? agricultural cultivation? buildings? flowers?)? Is the view blocked or marred by signage or built structures or poor conservation practices (eg. weeds, dead trees)? Is there a way to get out of the flow of traffic to enjoy the scenery?

(9) **Traffic Conditions.**

Is traffic congested? Slow? Fast? Are there recreational vehicles (campers, vans etc.) present? Heavy trucks? Farm vehicles? Bicycles? Is the road in good condition? Is the road paved? What shape is the road shoulder?

(10) **Road Conditions.**

Are there potholes? Shoulder wash outs? Guardrail problems? Poor (or no) center line markings? Detours due to construction or otherwise?

(11) **Ditches.**

Are there signs of soil erosion? Are ditches planted in grass? Has grass around shoulders and ditches been cut? Are there weeds? bushes?

(12) **Tourist Attractions.**

Location, type. Note landscaping and external appearance.

(13) **Undesirable Uses.**

Note any gravel pits, asphalt plants etc. Has there been any attempt to hide these from roadways by trees or fences?

(14) **Waterways.**

Note condition. Are there trees nearby? Any evidence of fishing? Pollution?

(15) **Ribbon Development.**

Is this commercial or residential? Adjacent to active farming? Is there driveway access onto a major highway (one designated by a single digit?)

(16) **Unsightly property.**

Note location and type (littered yard, generally poor quality housing, buildings falling down, buildings partially in need of paint, all of these or other). Is this a single property that is quite bad or a cluster that is fairly bad? Is this a commercial property? Is it still in business? Is there too much "glitter"?

(17) **Vacant Land.**

Is the area one where there is much land growing up in small trees and shrubbery with little sign of forestry and/or farming?

(18) **Weeds.**

Is there such a proportion of weeds that they detract from the surroundings? (Eg. whole field of weeds or a few weeds in an otherwise well-cultivated area.)

(19) **Obnoxious Smells.**

What appears to be the source? How big is the area affected?

(20) **Soil Erosion.**

Is there evidence of soil erosion in waterway? Are row crops planted on vertical lines on hillsides? Have hedgerows been removed over a wide area? Is there any evidence of terracing or ground cover buffers (eg. grass)?

Province of Prince Edward Island Tour
Observations and Impressions
Questionnaire

Name of Commission Member: ____

Total length of observation tour: 1,000 km.

Area to be covered by member: ____

1. Scenic Drive: ______________________________ (____km.)

2. A total of ____________ km. in the following geographical area:

While this route is of your own choosing, to ensure there is some balance in your route planning, please observe the following guidelines:

(1) A minimum of ____________ km. in ____________________ County and a minimum of ____________ km. in ____________________ County.

(2) A minimum of ____________ km. of secondary roads (those routes designed by 3 digits) in ____________________ County and a minimum of ____________ km. of secondary roads in ____________________ County.

(3) Cavendish area.

(4) One fishing wharf in each county on the Northumberland Strait and one fishing wharf in each county on the Gulf of St. Lawrence.

(5) One municipality in each county (other than Charlottetown or Summerside).

(6) One cottage subdivision in each county on the south side of the province and one cottage subdivision in each county on the north side of the province.

(7) One provincial park per county.

(8) Downtown business section of ____________________________.

CODE NUMBERS

1. Old Car Bodies
2. Roadside Litter
3. Dumpsites
4. Trees
5. No Trespassing Signs
6. Roadside Advertising
7. Directional Signage
8. Scenic Views
9. Traffic Conditions
10. Road Conditions
11. Ditches
12. Tourist Attractions
13. Undesirable Uses
14. Waterways
15. Ribbon Development
16. Unsightly Property (residential)
17. Vacant Land
18. Weeds
19. Obnoxious Smells
20. Soil Erosion

Date: ____________________

DRAFT NOTES

Code No.	Location	Observations/Comments

Province of Prince Edward Island Tour
Observations and Impressions

Draft Report on **Old Car Bodies.**

Name of Commission Member: ____________________

Report # ________: (1, 2, & 3) Scenic Drive: ____________________

Location: ____________________ Route No. __________

Length of Observation Area: __________ km.

No. of old car bodies sighted: __________

Site # 1
2
3
4
5

Other observations on old car bodies:

Province of Prince Edward Island Tour
Observations and Impressions
Final Report

Name of Commission Member: ____________________

Name of Scenic Drive: ____________________ (____ km.)

Describe the second tour which you took in connection with this project:

Describe the third tour which you took in connection with this project:

Name(s) of fishing wharves on Northumberland Strait:

Name(s) of fishing wharves on Gulf of St. Lawrence:

Location(s) of cottage subdivisions (South Shore):

Location(s) of cottage subdivisions (North Shore):

Name(s) of provincial parks:

Name(s) of municipalities:

During each of your tours, you were asked to visit a number of particular points in the province. At each point, look around as if you were a tourist or assume you have a group of first-time Island visitors with you. Are there features that would impress you if you were a tourist or a tour-leader? Are there features that cause you to cringe with embarrassment or at least wish they were remedied?

CAVENDISH

Date, time and weather conditions during your visit:

What were traffic conditions like?

Was the area crowded?

Was parking available?

Did you observe any inappropriate development in the area? If so, what?

Do you have suggestions for improvement? If so, what?

Observations and impressions of Cavendish:

FISHING WHARVES: (Scenic Tour)

Location: ____________________________

General observations and impressions:

Location: ____________________________

General observations and impressions:

(Second Tour)

Location: ____________________________

General observations and impressions:

Location: ____________________________

General observations and impressions:

(Third Tour)

Location: ____________________________

General observations and impressions:

Location: ____________________________

General observations and impressions:

MUNICIPALITIES: (All Tours)

Name: ____________________________

General observations and impressions:

Name: ____________________________

General observations and impressions:

Name: ____________________________

General observations and impressions:

COTTAGE SUBDIVISIONS: (Scenic Drive, North Shore)

Location:

Condition of roadway:

How many cottages are there:

Are the cottages modest or elaborate: A mixture?

Are there power and/or telephone lines:

Is the subdivision near water? sand dunes? swamp or marsh? woodland?

Are any of the cottages built on or near dunes:

Is there farmland nearby:

Do the cottages block a landscape or scenic view:

Do they enhance the view:

General observations and impressions:

COTTAGE SUBDIVISIONS: (Scenic Drive, South Shore)

Same as above.

COTTAGE SUBDIVISIONS: (Second Tour, North Shore)

Same as above.

COTTAGE SUBDIVISIONS: (Second Tour, South Shore)

Same as above.

COTTAGE SUBDIVISIONS: (Third Tour, North Shore)

Same as above.

COTTAGE SUBDIVISIONS: (Third Tour, South Shore)

Same as above.

PROVINCIAL PARKS: (Scenic Drive, North Shore)

Location:

Time of visit:

Weather conditions:

Is the park crowded:

Describe the landscaping. Are there trees, grass, flowers, paved areas: Note conditions:

Are washroom available: Note conditions:

Are there picnic tables? playground areas? other facilities?

What are your general impressions: Do you have suggestions for improvement:

PROVINCIAL PARKS: (Scenic Tour, South Shore)

Same as above.

PROVINCIAL PARKS: (Second Tour, North Shore)

Same as above.

PROVINCIAL PARKS: (Second Tour, South Shore)

Same as above.

PROVINCIAL PARKS: (Third Tour, North Shore)

Same as above.

PROVINCIAL PARKS: (Third Tour, South Shore)

Same as above.

MUNICIPAL DOWNTOWN:

Name of municipality:

Time of visit:

Is "main street" well kept:

Are there vacant buildings: How many:

Are streets in good repair:

Are there weeds or litter on or around downtown areas:

Are there trees along main street:

Are there flowers along main street:

Are buildings well painted or shabby:

What are traffic conditions like:

Observations and impressions on signage in the downtown area:

Other general impressions and observations:

Old Car Bodies: (Scenic Tour)

Location: ____ Route No: ________

Length of observation area: km.

No. of old car bodies sighted

Site # 1
2
3
4
5

Other observations on old car bodies in the observation area:

Additional observations on old car bodies in portions of the route other than the observation area used in the count:

Old Car Bodies: (Second Tour)

Same as above.

Old Car Bodies: (Third Tour)

Same as above.

Roadside Litter:

Location: ________________________ Type:

General observations and comments re roadside litter:

Roadside Litter: (Second Tour)

Same as above.

Roadside Litter: (Third Tour)

Same as above.

Dumpsites: (All Tours)

Location	Type (public, private)	Concealment	Control Measures	Surrounding Litter

Comments:

Trees: (Scenic Drive Tour)

Areas of forest clear-cutting without clean-up or roadside tree belts:

Location:	No clean-up	No tree belt	Approximate size

Observations re tree belts along streams:

Observations re hedgerows:

Observations re tree conditions:

General observations:

Trees: (Second Tour)

Same as above.

Trees: (Third Tour)

Same as above.

Roadside Advertising: (Scenic Drive Tour)

What type of roadside advertising did you observe:

commercial establishments
real estate
election posters

temporary electric
names of localities

other:

Is signage adequate in terms of information?

Is signage visible: Would it be adequate under poor visibility conditions such as night-time driving? poor weather? drivers with vision problems?

Did you take the tour under any of the above adverse conditions? (If so, name the condition(s)):

Are signs limited in visibility by foliage?

Do you like the provincial signage? (color? size? placement? groupings? etc.):

Do signs detract from the landscape? (Give examples re location, type):

Did you find other examples of roadside advertising (eg. flags, streamers, balloons)? How did you view these in terms of the landscape:

Observations and comments on roadside advertising:

Roadside Advertising: (Second Tour)

Same as above.

Roadside Advertising: (Third Tour)

Same as above

No Trespassing Signs: (All Tours)

Location	Blocking Beach Access	Protecting residential property, wildlife or farmland etc. (designate type of protection)

General observations re no trespassing signs:

Directional Signage:

Did you get lost or confused at any time:

Were there route signs on all roads: (If not, where?)

If you were not familiar with the area and/or route numbers, could you find you way easily:

Are there enough signs: Too many:

Is there sufficient information provided:

Are the signs compatible with the landscape:

General observations re directional signs:

Directional Signage: (Second Tour)

Same as above.

Directional Signage: (Third Tour)

Same as above.

Scenic Views: (Scenic Drive Tour)

Location	Type	Criticisms

Are there particular features that cause you to label a spot as a scenic view: What are those:

General observations re scenic views:

Scenic Views: (Second Tour)

Same as above.

Scenic Views: (Third Tour)

Same as above.

Tourist Attractions: (All Tours)

Location	Type	Landscaping & External

Were any of these tourist attractions inappropriate:

General observations and impressions:

Traffic Conditions: (All Tours)

Location Description of traffic conditions & road

General observations re traffic conditions and highway safety:

Road Conditions: (All Tours)

Did you encounter sections of road with numerous or serious potholes: (If so, where?)

Did you encounter shoulder washouts: (If so, where?)

Did you encounter poor or no centre line markings? (If so, where?)

Did you encounter detours due to construction or otherwise: (If so, where?)

Did you note any other road conditions that would be hazardous or that would mar sightseeing:

General observations and impressions:

Ditches: (All Tours)

Did you notice soil erosion along ditches: (If so, where?)

Identify areas where ditches were particularly unsightly:

General observations and impressions:

Unsightly Property: (All Tours)

In terms of your tour, list 3 of the worst examples of unsightly properties:

Location Commercial or Residential What makes them Unsightly

Why do you consider these to be the worst examples:

Observations and impressions on unsightly property:

Weeds: (All Tours)

Were there locations observed on your tours where weeds detracted from the surroundings:

Location Description

Observations and impressions on weeds:

Obnoxious Smells: (All Tours)

Location Possible Source Area Affected

General comments and impressions on obnoxious smells:

Waterways: (All Tours)

Location	Condition	Trees	Fishing	Pollution

General comments and observations on waterways:

Soil Erosion: (All Tours)

Location	Erosion in Waterway	Crops

Did you observe locations where hedgerows had been removed over a wide area: (If so, where?)

Did you observe locations where hedgerows were in poor condition: (If so, where?)

Did you observe locations where terracing, ground cover buffers and other signs of soil conservation were obvious: (If so, where?)

General observations and impressions on soil erosion and conservation:

General observations and impressions on any miscellaneous matters not already mentioned:

Ribbon Development: (All Tours)

In terms of your tour, list 3 of the worst examples of ribbon development:

Why do you consider these examples to be the worst:

Observations and impressions on ribbon development:

Vacant Land: (All Tours)

What locations did you tour with a high proportion of vacant land: Would any of these locations be suitable for other uses:

Observations and impressions on vacant land:

Undesirable Uses: (All Tours)

Location	Type	Concealment	Observations

General comments regarding undesirable uses:

APPENDIX C

Out-of-Province Tour
Report of the Commissioners

[Three members of the Royal Commission, accompanied by a member of the Commission's staff, departed from Prince Edward Island on 9 September 1989, by motor vehicle. The delegation returned on 22 September. In the interval, they met with a number of officials, experts and community-minded citizens in various parts of eastern Canada and the United States in order to learn about land issues and problems elsewhere and the solutions that were applied or contemplated in other jurisdictions. This report is a summary of this investigation.]

Our itinerary routed us through the Province of New Brunswick and into the State of Maine, where we travelled the coastal highway along Route 1 and Alternative Route 1A through much of the northern portion of the State. On route, we were able to observe coastal scenery and the effects of ribbon development. While we did travel inland to Augusta, Maine (the State capital), it was obvious from our first 24 hours on the road that *development is moving northward* and, from both individual knowledge of the State and what we later learned from talking to people in the State, *the northward pace of that development is fast*. Indeed, the speed of this thrust was described to us during our travels by one person involved in land use issues as a "fireball". He predicted that *if current trends in the U.S. continued apace, this pressure for land, often generated by people wanting recreational or retirement properties in relatively "undeveloped" areas, would spread quickly into Canada*. He forecast that the *pressure would strike very suddenly within a timeframe*, he suggested, *of some 18 months*.

It was also our "first taste" of discovering how intense the current trend is towards development along waterfront property. As we were later to see over and over again, there seems to be an American urge (and this may not necessarily be confined to Americans) to live or have a place of work near the sea - not just with water in sight but frequently the "urge" is manifested in building with the waterfront literally on the doorstep! We were amazed, for example, at instances of residential construction that placed dwellings on beaches and sand dunes, and at dwellings and businesses where it was possible to live or work "over" water.

Hartford, Maine

Our first meeting, however, was inland in Hartford, Maine, a very small village about a one-hour drive to the west of Augusta. The population of Hartford is perhaps 500 people - not unlike many Island villages. There were, however, two major differences we quickly observed. Unlike many of our communities with a comparable population, Hartford is not clustered in its settlement. We learned the community encompassed some 20,000 acres with just over 300 people on the voters list. More than 20% of the acreage was held by a Boston architect who had not done anything with it. The second major difference related to the provision of municipal services. Many of the services and responsibilities that are assumed by the province in Prince Edward Island were municipal (or sometimes private) activities in Hartford. While the municipal administration rested with four elected, volunteer "Selectmen" (with whom we met), the municipality had an annual report in excess of 50 pages detailing such matters as roads and bridges, fire and rescue services, garbage, cemeteries, education, plumbing permits, vehicle and recreational vehicle permits, support of the poor - the list seemed endless. Snow removal is done privately. The municipality contracts with 3 fire departments and 3 post offices to provide it with services. Property taxes are a local matter; professional assessments were first done in 1984 and the tax rate quoted to us was $20.60 per $1,000 (U.S.).

We chose Hartford as a place to visit because of press reports that it was embroiled in a controversy with a developer that began in 1987 when the Vermont-based Patten Corporation, described as New England's largest land-development company, planned a 62-lot subdivision on a 152-acre parcel with frontage on a local lake. After town residents learned of the project, a special town meeting resulted in a vote in favour of a six-month moratorium on new subdivisions. According to these press reports, Patten Corporation responded by suing the community for $1 million.

The Selectmen advised us that the State of Maine had imposed "shoreland zoning laws" in 1973, required that each town have a planning board, and recommended that each have a comprehensive plan that would be revised every 5 years by input from the residents. The planning board had not been very active until the development controversy forced decision-making on everyone.

The community split on the development proposal; some were very much in favour of the project, while others wanted their area to retain its traditional character and feared loss of access to nearby ponds.

The project proposal meant escalating land prices. We learned a 100-foot piece of land with water frontage in the area was selling for approximately $50,000 (U.S.). The developer planned to sell lots for over $100,000 (U.S.). The land had been owned by a lumber company that had sold the parcel for $450,000 (U.S.).

The State of Maine intervened in the Hartford case and eventually the developer was given the "green light" to proceed on a project that would be phased-in and contained a number of stipulations. We received a copy of the "Site Location Order" issued by the Department of Environmental Protection for the State of Maine which indicated the substantive matters dealt with, including the developer's title, right or interest in the land, its financial capacity to carry out the project, its contracts for handling solid waste over a three-year period, documentation on the sufficiency in quantity and quality of groundwater, the developer's responsibilities regarding road and parking construction and maintenance, the developer's responsibility for the installation of boardwalks and shorefront access dedicated to the municipality, the State's findings on natural drainage ways and the developer's responsibilities for stormwater run-off, the developer's erosion and sedimentation control plan with revegetation standards and specifications for temporary and permanent erosion controls, the developer's responsibilities to ensure surface water quality, groundwater quality and quantity, buffer strips, and wastewater disposal. The document also contained findings and orders respecting historic sites, unusual natural areas, scenic character, wildlife and fisheries, soils, wastewater disposal, maintenance of common facilities and property, and access to direct sunlight.

During the negotiating process, Hartford developed a land use ordinance relating to building lot standards, residential growth, road standards and subdivision regulations. There were a number of interesting features in these rules, such as the following:

- Ponds, streams and wetlands were protected by strict rules on building and other activities within 250 feet of the water. It is necessary to obtain a permit for almost any type of construction, additions or changes affecting the soil or trees near the water.

- A building permit is required before building any structure of 200 square feet or more or enlarging an old structure by 100 square feet or more. Permits for year-round dwellings permit use in excess of 6 months during the calendar year. Permits for seasonal dwellings are limited to six months or less usage; to convert a seasonal dwelling to one of year-round use requires a year-round building permit and a growth permit. The penalty for undertaking any land use activity without a required permit is a minimum of $100 and a maximum of $2,500. The municipality can obtain an injunction to prohibit anyone from making use or occupying any dwelling or trailer erected or established contrary to the ordinance.

- Lot sizes are a minimum of 3 acres per lot with a minimum road frontage of 250 feet and a 25-foot setback for buildings. An exception is made where a dwelling has been destroyed by fire or natural disaster if it is replaced at the same location within one year.

- The residential growth ordinance applies to all new dwelling units except for housing funded by government agencies for use by the elderly, handicapped or economical ly-disadvantaged persons. Repair, replacement or alteration of any existing building is exempt so long as no additional dwelling unit is created. There is a special exemption for any Hartford resident who wishes to move from his present dwelling into a new single-family dwelling he proposes to build in Hartford. Such a special exemption can be granted only once to the same person within any ten-year period.

- The residential growth ordinance sets a maximum rate of house building. Aside from the exemptions indicated, a maximum of 10 building permits may be issued each calendar year. (This would allow a 5% growth in housing per year). Permits are available at the rate of one per month, January through October. A permit which is not granted in any month is carried over to the following months but any un-issued permits at the end of the calendar year are not carried over to the next year. Permits are not transferable; they are valid for construction only by the applicant and on the lot specified in the application.

- A growth permit is issued on the 10th day of the month unless there are more applications pending than permits are available. In that event, permits are allocated on the basis of a point-rating system. Points are allocated for the length of wait (i.e. the number of months an application has been pending), taxes paid (i.e. the number of years the applicant has paid taxes on the property), soil suitability, open space and tree growth, and the affordability of housing (i.e. points are allocated for low-cost housing).

- Applications are considered as automatically withdrawn after 4 months unless a written request for renewal is made within 30 days.

- A subdivision was defined as the division of a tract or parcel of land into three or more lots within any five-year period. A tract or parcel of land included all contiguous lots with the same ownership, but land on opposite sides of a public or private road would be considered a separate parcels unless the road had been established by the land owner. (Lots of 75 acres or more were not considered part of a subdivision.)

- Subdivisions were required to comply with extensive regulations. Proposed subdivisions were not to result in the degradation of land or water. The measures called for preservation and maintenance of natural features (such as trees, watercourses and scenic assets) in the layout of lots, roads and common areas. The quantity and quality of water and measures to prevent soil erosion were among the standards prescribed. Relatively level and dry land suitable for recreation had to be provided in any subdivision larger than ten lots, although a payment in lieu of dedication could be made to a municipal land acquisition fund.

- Odd-shaped lots in subdivisions could be prohibited; the ratio of lot length to width was not to be more than five to one.

- Topsoil could not be removed from a subdivision site except in limited circumstances. The retention of existing woodland and vegetation was also prescribed.

- Subdivision approval also required that the subdivision "will not have an undue adverse effect on the scenic or natural beauty of the area, aesthetics, historic sites or rare and irreplaceable natural areas or any public rights for physical or visual access to the shoreline".

- The subdivision ordinance also requires performance guarantees to cover the costs of all required improvements including roads. Improvements must be completed within 2 years, although an extension of the performance period, not longer than 12 months, may be granted. Failure to commence substantial construction of the subdivision within 18 months after final approval renders the approval null and void. The municipality notifies the Registry of Deeds in this event.

- Performance guarantees are required prior to final approval of a road design. The performance guarantee must be sufficient to defray all expenses of the proposed road construction and the amount must be at least equal to the total cost of all street grading, paving, storm drainage, and utilities or other improvements specified on the plan within two years of the date of the performance bond or certified check or irrevocable letter of credit.

- If roads in a subdivision are to remain private, the recorded final plan must stipulate that the developer or lot owners are wholly responsible for maintenance and the roads shall not be accepted or maintained by the town.
- No subdivision plan is approved as long as the subdivider is in default on a previously-approved plan.

We were particularly impressed with the simple, straightforward way in which the Hartford Land-Use Ordinances were drafted. An "Introduction" provided, in 5 paragraphs, a summary of the main situations when standards were to be followed. Article III of the Subdivision Regulations was a "simplified outline of steps toward approval" that began with a provision said to be "optional": "Read town ordinances and attend a planning board meeting to get a feel for the situation". This is not to suggest that the Ordinances were not properly crafted, for many provisions contained great attention to detail in establishing the standards for land use. But the regulations, clearly, had been composed with a view towards generating a public understanding of the rules.

The Hartford visit demonstrated to us the type of crisis that can occur quickly in a small community when outside interests decide on development and how the community may be forced into responses even though its local capability to do so is quite limited.

Freeport, Maine

Because of suggestions made to us in planning our tour, we travelled from Hartford to our next meeting by way of Freeport, Maine and by way of certain sections of the southern portion of Route 1 (the coastal highway) rather than the interstate highway which is further inland.

Freeport is a community in southern Maine, perhaps most noted for the L. L. Bean store that is open for business on a round-the-clock basis each and every day of the year. While this is a long-established business, in recent years Freeport has witnessed a proliferation of factory outlet shops so the community has become a commercial centre for tourist shoppers. Since then, Freeport has undertaken extensive planning and regulatory measures to ensure managed growth compatible with enhancing its tourism/commercial base.

It was obvious from the professional planning literature that opinion was divided on Freeport's success. An article that appeared in *Planning* magazine in August of 1988, had indicated the director for the State Planning Office for the State of Maine used Freeport as "a worst-case scenario". In response, the November issue contained a letter from the Chairman of the Town Council in Freeport. The correspondence, in part, outlined the measures undertaken in the community's planning exercise:

> Here in Freeport, we have developed pioneering and effective methods of dealing with the complex issues of growth management. In a thorough 18-month process, Freeport hammered out a revised comprehensive plan and zoning ordinance. Add to this the creation of a design review district and board, ordinances regulating

directional and store signs, effective site review laws, parking requirements, establishment of a municipal land bank, exhaustive traffic and parking studies, determined management of our shellfish resources, ground water and bedrock aquifer studies, an extremely successful solid waste recycling program, and a new town planner, and you have not a "worst-case scenario" but a model community.

While we did not have any meetings scheduled with officials in Freeport, our brief visual observations confirmed the validity of both sides of the debate. There were quite distinctive indications that the community was subjected to regulatory provisions. The most obvious signal was in regards to signage: even McDonald's had abandoned its traditional "Golden Arches" in favour of small, tasteful signs that showed design conformity with others nearby. The results produced a number of very pleasing aesthetics in the community.

On the other hand, there was much about Freeport to suggest its current planning measures came too late to preserve or enhance the livability of the community for its residents. The most obvious indicator that Freeport had had a traditional land use planning philosophy grounded in a lack of regulatory control can be found in its main street which doubles as a major highway. The thoroughfare is narrow and, on either side, businesses have been built in an unplanned way. Even though Freeport now has ordinances for traffic and parking, both foot and vehicular traffic is very congested. Had Freeport undertaken more extensive planning at a much earlier stage in its growth, the problems that now confront it would very likely have been somewhat mitigated.

In addition to viewing Freeport, we had the opportunity to drive through a section of southern Maine recommended to us by Mr. Randall Arendt, a planner for the Centre for Rural Massachusetts, who had indicated we could "see what bad planning has done". (For more information on Mr. Arendt, see the section on Amherst, Massachusetts in this report.)

This section of southern Maine aptly illustrates ribbon development at its worst. Coupled with traffic problems that seemed "unsolvable" and haphazardous land use for miles, the drive also illustrates how prime waterfront landscape can be obliterated. Even though much of the highway is sufficiently close to the coastline to be a very scenic drive, any view of the water is virtually impossible because of the placement of structures between road and water. From time to time there are spots to allow public access at least to observe the water. We stopped at one of these. Once the vehicle was parked, the driver's door was within scraping distance of the windowbox on the house next to the public section. A second vehicle attempted to park in the space adjacent to the passenger side of our vehicle; there was insufficient room to do so. Waterfront property on the eastern seaboard is a commodity often priced in dollars per linear foot!

Dover, New Hampshire/Nag's Head, North Carolina:

Our second meeting was held in Dover, New Hampshire on 12 September where we spent the afternoon with Mr. Bill Collins, Director of Planning for Dover.

It was because of Mr. Collins and his work before he came to Dover that we sought out this meeting, for he had previously been the planner for Nags Head, North Carolina. Nags

Head, a community of 1,100 on the Outer Banks of the Carolina coast is built among sand dunes. Professional literature indicated Nags Head had recognized the benefits of planning before it was too late for the community. According to reports, the year-round population had more than doubled in a decade (from 414 to 1,020 between 1970 and 1980) while the seasonal population escalated to a summer peak of 30,000. Faced with a prediction that the permanent population could grow to as much as 6,000 by the turn of the century, Nags Head hired Mr. Collins as a full-time planner.

The work that Mr. Collins had done while in Nags Head over the span of almost five years was lauded in professional literature. Sylvia Lewis, author of "The Little Town That Could" (*Planning*, June 1987, vol. 53, no. 6, pp. 14 - 17 at pp. 15 and 16), described his approach in the development of planning based on the concept of "carrying capacity":

> In some ways, he [Mr. Collins] followed standard procedure. Ask residents what they want to do with their town, write a land-use plan based on the answers, and devise ordinances based on the plan. Then came creative license.
>
> Instead of holding a few hearings to take the public pulse, the town mailed out 4,000 seven-page questionnaires. Survey forms were sent to everyone living or owning land or a business in the town; they generated 60 percent response. Instead of stopping with a standard land-use inventory, Collins put together a carrying capacity study to figure out how much development the town could support. The study included computerized spreadsheets showing how development would affect sewer and water resources, police and fire services, recreation facilities, and so on.
>
> From the data and from the town's constant refrain, "We don't want to be another Virginia Beach" (that is, choked with beach-front hotels), Collins concluded that some growth management policies might be in order - and town official agreed. Here are some of the policies they adopted in their 1985 land use plan the town's second plan:
>
> * *Move back from the Atlantic.* "Our policy is to retreat rather than to fight the ocean," says Mayor Don Bryan,... . This means no hard structures for beach protection; it means that bigger buildings like hotels should be located west of the beach road (which is only about 100 yards from the high tide line); and it means that new houses should be built well behind the foredunes.
>
> * *Build only to the limit of the town's capacity.* Because fresh water is scarce, people who want to build in Nags Head must compete for tap permits, paying a $2,000 permit fee for each single-family unit or its equivalent. (Half the fee is put aside to fund expansion of the town's water system.) Further, the town annually issues new permits for only 132 single-family units and duplexes, 57 multifamily and motel/hotel units, and 25 commercial units.
>
> The competition for water taps takes the form of a point system. Conceptual site plans are graded according to conformance with the land use plan. Developers with the highest grades are given tentative water allocations and then may submit their final plans to the planning board. Town officials say that the quality of site plans has definitely improved in the 18 months since the water allocation system began.

> The water tap fee is Nags Head's only impact fee to date, but the town has permission from the state legislature to impose other impact fees as needed (for roads or emergency services for example). For now Dare County communities and the city of Raleigh are the only North Carolina municipalities that are allowed to impose local impact fees.
>
> * *Stay residential.* "Nags Head does not wish to become a regional commercial center," says the land use plan. As a result, the town is reducing the amount of land zoned for commercial uses and will prohibit most industries.
>
> * *Don't do anything to encourage major growth.* The most telling policy in the land use plan - a policy that town officials wrestled with - is the one outlawing a public sewer system. Nine-tenths of the town's dwelling units have septic systems; the rest use packaged treatment facilities.
>
> "A lot of people on the North Carolina coast advocate a public sewer", says Bill Collins, "but then density would explode because that more than anything else is the limiting factor on growth in this area. I remember vividly the workshop in which the planning board said, "We don't want a public sewer because it would increase density; I was proud of them for putting it in writing and adopting a policy."

During our meeting, Mr. Collins explained the carrying capacity concept to us in further detail. It requires a tremendous amount of data, development models and expense. The State of North Carolina, for example, complied all historical photos of the shoreline. Periodically they would fly over the area to observe it. By determining the rate of erosion, decisions can be made in respect to set-backs. For example, in one area of Nags Head, it was found that the erosion rate was 10 feet per year. It is this type of data that is needed to implement carrying capacity in the planning process.

In the process it was learned the community had a 5-year remaining water supply. The granting of building permits directly related to the water supply. An impact fee of $3,000 is now charged for the right to tie into the water supply.

Mr. Collins suggested any planning department should endeavour to be self-supporting through the collection of fees for services (eg. building permits).

The planning needed for a "carrying capacity" study needs specialists working in specific areas (eg. traffic specialists, water specialists). The planner must be *forced* to *create* for the community, not bring in a modified, old plan used in some other community.

Mr. Collins was now involved in planning for Dover, a city not unlike Charlottetown in some ways.

He told us Dover had become complacent in its planning until a three-year period saw residential growth of 20% with industrial growth going elsewhere. Dover is now looking at impact fees to pay for infrastructure. Impact fees would cover 4 areas: elementary schools, street improvements, fire services and parks. (These are the costs that rise with residential growth - and the growth in the tax base may not offset infrastructure costs.) Impact fees are hotly debated in New Hampshire.

Mr. Collins made a number of helpful suggestions in discussing his approach to planning. Try to develop a definition of "premature growth" - i.e. developing something somewhere before there is evidence of development in that area. He advocated the implementation of prohibitions on premature development so that building permits will not be granted if someone wants to build or develop in a "premature" area. He pointed out that scattered and premature development is a subjective thing. But developing land that is spatially separated from the community core means costs for paving, schools, hospitals etc. Cluster subdivisions means a wiser use of land and makes it cheaper to build houses.

He told us that prime farmland has been defined and mapped by the State of New Hampshire and this is based on soil types. But there was little being done about it, which is causing a lot of concern. Land use is controlled at the municipal level and people in New Hampshire are very opposed to regulation.

In our meeting with Mr. Collins, he stressed the importance of education. *People must know what will happen with no planning.* He urged the need to "get the media on your side", to let reporters know what planners are attempting to do. He recommended hosting a conference for media, politicians and locals to inform them what can happen (i.e. have people from other areas relate "horror stories" of what has happened in their area) and what can be done to prevent it (i.e. have professionals give solutions and/or preventative measures).

He urged that we recommend the Province define and then demand a very high level of quality in development. Then get these requirements into regulations and policies so it becomes entrenched in everyone's thinking. He advised a "tough" approach; be selective in planning and stick with it.

Lincoln, Massachusetts

On September 13, we had the opportunity to meet in Lincoln, Massachusetts with Mr. Warren Flint, Jr., a local Selectman.

Aside from his elected municipal post, Mr. Flint is a registered landscape architect and president of the land use planning and design firm of Matlock Associates. On a professional level, his credentials included several years of guest lecturing at the Harvard Graduate School of Design. In addition, he had authored "A Primer on Transferable Development Rights" for the Rhode Island School of Design and the "Open Space Plan for Town of Lincoln, Massachusetts". As well, from a personal standpoint, Mr. Flint could trace his family roots in Lincoln back to colonial times.

Lincoln has a population of some 5,200 people in an area of approximately 9,500 acres. While it is now essentially a "bedroom community" for Boston, it has a long history of agricultural importance and, adjacent as it is to Lexington and Concord, its heritage is an important one. Lincoln, for instance, has the famed "Walden Pond" within its borders. We were advised to go to see Lincoln because it had been so active in the preservation of agricultural land that some professionals proclaimed Lincoln had more farmland today than it had 25 years ago. Mr. Flint assured us this might be an exaggeration, but the use of careful land planning tools had resulted in the preservation of both farmland and many other open spaces.

Lincoln, we learned, was no stranger to land use planning. It had accepted the principles of zoning as far back as 1929 when minimum lot sizes of 10,000 square feet were mandated. This standard was increased to 40,000 square feet (almost one acre) in 1936 and moved again to a two-acre size in 1955. Today the majority of the area is still zoned for single-family dwellings in two-acre parcels, but there are provisions to allow for an accessory apartment or dwelling on a parcel if certain standards can be met in order to ensure a proportion of affordable housing for special groups like seniors and young couples. A master plan for the area was developed more than three decades ago and Lincoln became one of the first municipalities in the Commonwealth of Massachusetts to preserve areas for public recreation, to protect its water supply, and to conserve its wildlife. Lincoln has held a well-prepared, community-based land use conference for all its residents on various occasions. The 1983 conference spanned two days and both the pre-conference material and the final report illustrated the priority placed on land use planning in this area.

Throughout the years, Lincoln has consistently sought to accommodate growth while maintaining its rural character. One measure of its success in attaining these goals is the map issued by the Town of Lincoln on "waterproof paper" detailing cross country skiing trails (and the rules applying to using public and private lands for this purpose); there are 13 named trails and numerous others "neither marked nor named", along with designated parking locations, within the boundaries of the community.

Agricultural preservation began in 1976 when an inventory of agricultural lands in the community was undertaken. "Included in this study were all lands presently being actively farmed, as well as those lands no longer in agricultural use but which have not reverted to advanced stages of field succession, and thus could easily be reclaimed for agriculture". (*An Open Space Plan for the Town of Lincoln,* 1977, p. 35). The lands were then further classified according to their use or former use (eg. pasture, orchard, nursery etc.) The preservation of agricultural lands became a high priority in the land use plan for the area because this offered so many local opportunities, which included the improvement of soil fertility under proper management, summer employment opportunities, a local supply of fresh vegetables, the use of farmland for recreation after crop harvesting, preservation of habitats for many wildlife species and the preservation of open spaces and vistas to enhance the rural character of the community.

The program to preserve agricultural lands was aided by state tax laws that allowed land actively devoted to farming to be assessed at the value of its actual use in lieu of its "highest and best use". To have this assessment, the property owner had to apply and eligibility was reviewed on an annual basis. Each parcel of land had to be five or more contiguous acres and the derived products had to have a value of not less than $500 in order to qualify.

The program was further explained in *An Open Space Plan for the Town of Lincoln,* 1977, at p. 40:

> Once accepted under this program, the owner may take his land out of agricultural or horticultural use, but only under prescribed procedures. If the land is converted to a use other than farming, the landowner must pay roll-back taxes equal to the difference over the five past years between the tax at the full value rate and that at the lower agricultural rate. If the owner wishes to sell his land or to convert it to another use but intends to retain ownership, he must notify the Town of his intentions, and then the Town has a 60-day first refusal option to buy the land.
>
> Review of Lincoln's agricultural lands indicates there are a total of twenty-four parcels of land held by twenty-one individual owners which appear to qualify for the Chapter 61A farm assessment [described in further detail below]. With the full cooperation of the Board of Assessors, ten of the twenty-one owners have applied for the Program, and several others have made or plan to make a gift of conservation restrictions. The Conservation Commission has assisted and will continue to assist anyone interested in the Program.
>
> A proposal for a second state program geared to the preservation of agricultural lands is presently under consideration by the General Court. There is hope that it may be passed this spring. It calls for the establishment of a pilot program of development rights purchase. Simply stated, the conventional concept of land is comprised of two parts: first, the physical or geographic property; and second, a "bundle of rights" associated with the particular property. By separating the right to develop from the ownership of the property, the rights can then be sold. It is proposed that the State fund the purchase of development rights of some farmland by towns. Once the development rights have been removed, the value of the land is greatly reduced. Also, the "highest and best use" of the land then becomes agriculture. If this program is enacted, acceptance of some of Lincoln's farmland will be sought by the Conservation Commission.

The on-going efforts to conserve open spaces in Lincoln was also obvious in documentation provided to residents for their two-day conference in 1983. *Route to Tomorrow: Challenges and Choices,* the pre-conference manual, explained the means of financing conservation acquisitions that included state funds, private gifts, creative development and town appropriations financed by bond issues. In addition to these measures, which were applicable to purchases of agricultural lands as well, the property tax incentives continued to be a measure of ensuring property owners would continue to leave lands in agricultural production. These were being augmented by the purchase of development rights and other measures, as explained in the conference briefing book at pp. 47-8:

> Another effort to preserve Massachusetts farmland has come through the Farm and Conservation Land Trust which has made available (from limited funds) up to $10,000 an acre for purchase of development rights on land whose soils have been identified and judged valuable for farming. By selling his "development rights" a land owner relinquishes permanently his right to build on his land, but retains his ownership. Once the development rights have been removed from a parcel of land, its value is closer to $2,000 an acre than to the current value of residential land, up to $50,000 an acre.

> The Town of Lincoln has preserved much farmland through its acquisition of conservation lands and through the generous gifts of a number of citizens. A further encouragement to farmland preservation is a Federal tax deduction for the full value of land given to the town. Also, owners who place a permanent conservation restriction on their land are entitled to a Federal tax deduction in addition to lowered real estate tax assessments. Temporary conservation restrictions also allow for reduced tax assessments as determined on a case by case basis by the Board of Assessors, subject to certain State limitations.
>
> The mechanisms for protecting Lincoln farmlands, then, include the aforementioned Chapter 61A [which is State law, explained below], the outright gift of land to the town (with the benefit of a Federal tax deduction), conservation restrictions (permanent and temporary) and the purchase of development rights, possibly with some contribution from the Farm and Conservation Lands Trust. Since this trust has contributed a maximum of $10,000 per acre toward buying development rights on farmland, Lincoln would have to find the means to make up the bulk of the difference between the "house lot value" of the land and the farmland value. It could come from contributions by individual citizens, from appropriation by the town, from donation by the land owner, or from a combination of these sources.

The efforts used by Lincoln to preserve agricultural lands are now being promoted throughout the Commonwealth of Massachusetts. *Land Conservation Methods and their Tax Advantages: A Guide for Massachusetts Landowners,* a publication of the Essex County Greenbelt Association and The Trustees of Reservations, was in its second printing by June of 1989. It described the voluntary conservation methods available to landowners interested in preserving the special ecological, recreational, agricultural or scenic features of their properties. The use of private initiatives to preserve natural areas and open spaces is emphasized.

The publication refers, at page 10, to a number of kinds of "partial interests" in land including "conservation restrictions, scenic easements, agricultural preservation restrictions, and similar legal devices which limit development or alteration of land permanently in order to achieve some conservation purpose or to protect specific conservation interests".

The publication describes three programs designed to conserve lands for forests, agricultural and horticultural use, and recreational land. All three programs hinge on property tax reductions. They are voluntary programs with specific criteria for eligibility and the provision of penalties if the land becomes ineligible or is withdrawn from the program.

The principal features of the program with respect to agricultural and horticultural land arising from Chapter 61A of Massachusetts tax law, were detailed at pp. 27-8 of *Land Conservation Methods and their Tax Advantages: A Guide for Massachusetts Landowners:*

> - The land must be actively devoted to agricultural or horticultural uses during the present tax year and for the previous two tax years. Agricultural and horticultural uses include raising animals, food for human or animal consumption, tobacco, flowers, plants, and shrubs or forest products for sale in the regular course of business.

- The landowner must enroll at least 5 acres and show gross sales of at least $500 per year in agricultural or horticultural products, plus $5.00 per acre for each acre over 5 acres ($0.50 per acre if wetland or woodland).

- A conveyance tax is due if the owner sells the property for use other than in agriculture or horticulture, of if the use is changed by the owner within 10 years. The tax equals 10% of the total sales price in the first year, 9% in the second year, 8% in the third year, and so forth. No conveyance tax is due if the new owner agrees to retain the land in agricultural or horticultural use.

- If enrolled land ceases to become eligible, the owner must repay all taxes saved during the current and preceding four tax years. If the conveyance tax is greater than the rollback tax, the owner pays the former (but not both).

- In the event of a proposed sale or development which would remove the land from the program, the municipality has a 120-day right of first refusal to match the buyer's *bona fide* offer. If it elects to make the purchase, no conveyance tax or rollback tax is due.

- Under a provision added in 1986, the municipality may assign its first-refusal option to a non-profit organization, which would have 120 days to match the buyer's offer. (The right of first refusal only applies when the sale will result in a change of use or removal of the property from the program.) Having acquired the property, the non-profit organization may then resell the parcel to a farmer or other appropriate buyer, provided that the major portion of the parcel will continue in agricultural or horticultural use. This procedure was designed to facilitate protection of threatened farmland parcels, by making it possible for a Chapter 61A parcel to be acquired without a Town Meeting or City Council vote, thus saving precious time. Normally, the non-profit organization would sell an agricultural preservation restriction to the Commonwealth soon after acquiring the parcel, but variations to this procedure are possible.

- Land under the Commonwealth's Agricultural Preservation Restriction program must be assessed as if it were under Chapter 61A.

An analogous program applied to forest land by virtue of Chapter 61 of the laws of the Commonwealth. Its principal features, as outlined in *Land Conservation Methods and their Tax Advantages* at pp. 25-6, were as follows:

- The landowner must enroll at least 10 contiguous acres of forest not developed for non-forest use.

- The landowner must furnish a 10-year forest manage ment plan prepared by a professional forester. A state forester will review the plan and visit the property before certifying eligibility.

- The state-certified plan is then submitted to the local assessors for a special forest land classification. Classified land is assessed at 5% of its fair market value, with a $10 minimum assessed value. The normal town tax rate is applied to find the amount of property tax due.

- The landowner must pay a "products tax" equal to 8% of the stumpage value of wood products harvested during the eligibility period and for two years prior to eligibility.

> * If the landowner withdraws from the program or fails to comply with the management plan, he must repay all taxes saved while in the program (up to 10 years), plus interest. The penalty will not apply if the owner sells the property and the new owner agrees to continue under the program.
>
> * If proposed sale or development would remove the property from the program, the municipality has a 120 day right of first refusal option to match the buyer's *bona fide* offer to purchase the property. Under a provision added in 1987, the town may assign its right of first refusal to a non-profit organization, which then has an opportunity (under conditions established by the selectmen or city council) to match the buyer's offer and acquire the property. The purpose of this assignment of the right of first refusal must be to maintain the major portion of the property in use as forest land.

A third measure, known as Chapter 61B, was designed to provide incentives for open space recreational areas. The principal features, outlined at p. 28 of *Land Conservation Methods and their Tax Advantages* included the following:

> Chapter 61B reduces property taxes on certain recreational lands. These lands are limited to the following uses: hiking, camping, nature study and observation, boating, golfing, horseback riding, hunting, fishing, skiing, swimming, picnicking, private non-commercial flying and hang gliding, archery and target shooting. Race tracks, stadiums and the like are not eligible. The basic provisions are as follows:
>
> * At least five acres of eligible land must be included.
>
> * Valuation of land under the program shall not exceed 25% of fair market value.
>
> * A conveyance tax is due if the owner sells the property for non-recreational use, or if the use is changed by the owner within 10 years. The tax equals 10% of the sales price if sold within the first five years, and 5% of the sales price if sold within the sixth through tenth year. No conveyance tax is due if the land is sold for and retained in recreational use by the new owner.
>
> * In the event of proposed conversion of the property, the municipality has a 120-day right of first refusal option similar to that described under Chapter 61 and 61A. Under a provision added in 1987, the municipality may assign its option to a non-profit conservation organization, provided that the major portion of the property will continue in recreational uses.

Our tour of Lincoln, under the direction of Mr. Flint, revealed to us that the situation there was somewhat different from our own. For one thing, what was thought of as a farm in Lincoln was very small by our standards. The urban influence was very evident by the fact that the town itself had purchased a farm for the sole purpose of educating city children to rural life. A full-time farmer was hired and a few summer students supplement his work. They grow crops, raise cattle and sheep organically and make a profit for the community.

A second notable difference was the quality of housing and its costs. There was no municipal sewage system. A two-acre lot with no amenities was priced around $250,000 - more if a central sewer or water system was provided. A cost of $550,000-$800,000 for housing with town water and individual septic systems was quoted to us.

Site plans and landscape plans must be approved before building begins. (Mr. Flint advised that developers should bring the water supply into subdivisions unless a municipality has to offer growth incentives. Otherwise, the developer is being subsidized by local residents.) With many "high tech" industries in the area, residents were affluent. Homes in the area reflected this - large, treed lots, 3-car garages. However, this meant people who grew up in Lincoln now have to move elsewhere because they cannot afford to live in the community anymore; people such as teachers and "blue collar" workers fall into this category.

We discussed strip development during our meeting. Mr. Flint felt traditional zoning encouraged strip development, which does not lend itself to community spirit. He recommended cluster development that concentrates the area which requires water and sewer servicing. Cluster development means increasing the density in one area in order to preserve the rest of the area. It often results in long spine roads with little clusters of houses or a spoke/hub design that reduces servicing costs.

Cluster development can be achieved through a program that allows the transfer of development rights. This involves the identification of areas where development should take place and those to be protected, together with the establishment of a mechanism where the open market allows land development rights to be moved. The transfer of development rights takes away the right to ever develop a protected area.

He advised us that some communities in the Commonwealth of Massachusetts have zoned areas for agriculture. Bylaws have been developed to reduce conflicts between non-farming residents and agricultural owners. The adjacent community of Concord, for example, had an ordinance requiring that manure spread on land had to be plowed under within 24 hours. The tax concessions under Chapter 61A meant land normally assessed for $125,000 per acre would be assessed for $2,500 - $3,000 (i.e. the "going rate" for agricultural land).

Mr. Flint urged us to keep our rail rights-of-way for the future. Land was lost by the community in his area when cars became popular and now they cannot buy it back.

There were a number of private, non-profit organizations active in the area, acquiring land for open space uses. A Rural Land Foundation, which is a private, non-profit organization, buys land coming on the market, paying full market value. They do limited development on a small portion of it and protect the rest. The Foundation has made money on this. A Lincoln Land Trust accepts gifts and legacies of land for open space preservation.

Conservation Commissions are required by the Commonwealth of Massachusetts; these protect wetlands by imposing Commonwealth law at the local level and dealing with land conservation for open space recreation. Conservation Commissions are made up of 5 - 7 volunteers who are far-thinking people looking at where the community should go. These people set the tone for what the community is today.

Mr. Flint also stressed the need to keep citizens informed and involved in land issues. The community conferences, held every 8 - 10 years, were a good example. A committee identifies issues of concern. A report is prepared and sent to every household in advance of the 1 or 2-day conference. Experts are brought in, discussions are held, and, hopefully, some solutions are reached.

1000 Friends of Massachusetts

Our meeting in Lincoln coincided with the announcement of the formation of 1000 Friends of Massachusetts, a non-profit citizen's group "committed to preserving the State's quality of life and continued economic vitality based on wise land use", to quote from its press release of September 13, 1989. Because of this, we were unable to fit a meeting with "Friends" personnel into our schedule. (The headquarters for 1000 Friends is Lincoln.)

However, we learned that similar organizations have already sprung up in a number of states, beginning with the founding of *1000 Friends of Oregon* in 1975.

The organization, which consists of a cross-section of people dedicated to raising "public awareness to the perils facing the physical landscape", has the prime goal of achieving "a coordinated state-wide planning process". The press release announcing its formation stated "we think Massachusetts citizens are ready to play hardball to protect the special character of their state, before it is too late." Planning and managed growth are central to the organization.

> But we emphasize: this does not mean stopping growth, it means productive growth, growth that benefits present generations without robbing future ones. It also means making some serious and difficult choices, soon, while there are still choices to be made. We should not fool ourselves: Not making choices at this point is a choice in itself.
>
> The price we have paid for not making those hard choices is a heavy one.

The organization cited numerous examples where the lack of planning had produced major problems. For instance, the number of dairy farms had declined from 3,000 to 600 in a decade while, in the previous year, only 38 were saved under the Agricultural Preservation Restriction Program. The 100 farmers currently applying could not sell development rights because the program had run out of money.

The *1000 Friends* also cited the lack of planning processes at the municipal level. The towns "have been at the mercy of many unsound development projects....there is no long-range protection for the developer, the residents, the town's character and least of all the landscape. In too many areas, even good development is simply not being allowed to happen." The absence of local planning means "community preferences including where development should and should not go, remain unknown. This uncertainty in the development process increases confrontation during the regulatory review process, and adds considerably to the overall costs."

With sponsorship "from the business, development, academic, industrial, and planning communities, as well as from the media, farmers, environmentalists, fishermen, and historic preservationists", the organization was headed by a Board of Directors and a Board of Trustees of almost 100 individuals. It promised to "promote broad and effective citizen involvement in the comprehensive planning process by: fostering active citizen involvement and community education on growth management issues; building a statewide coalition advocating effective statement growth management; participating in the development of growth management rules, policies and plans at all levels of government; and encouraging integrity and accountability in the growth management process."

According to its initial announcement, "1000 Friends will primarily espouse a non-confrontational strategy, through education and consensus building, but will act [as] a strong advocate for sustainable growth that preserves the quality of life for all citizens of the Commonwealth."

The organization proposed a vision for the Commonwealth of Massachusetts: "one that preserves the character of our neighbourhoods and communities, saves money, and increases the equitable distribution of the qualities of life that are attractive to investment and vital to our environment. The key is a threeway partnership: local control, state guidelines and regional involvement."

The vision included a "working plan" that included a number of elements, such as:

- comprehensive planning at the state, regional and local levels;
- mandated consistency between all levels of planning;
- special attention to particularly sensitive areas;
- development that effects a whole region regulated at the regional level;
- establishment of boundaries by towns within which development is encouraged, and outside of which it is discouraged;
- a process for the resolution of conflicts;
- citizen input into every level of the planning process;
- a timely commitment to implementation through the promulgation of regulations; and
- sufficient financing for implementation.

The "vision" also included ten "guiding principles". These principles are such that they could commend themselves to the Prince Edward Island situation. Consequently, it is worthwhile to state them as put forward in the "vision".

Guiding Principles

1. *We, the citizens, have a right to help make decisions relating to the use of the land.*

   We have a right to be heard, and must never feel powerless to effect change. While there are still choices to be made, we need to take an active role in the decision-making process.

2. *Our true commonwealth rest on an economy which maintains and improves the quality of our land, air, and water.*

   In the long run, destruction of healthy natural resource systems has serious economic as well as ecological costs. Industrial, commercial and service sectors of our economy can continue to expand economic opportunities without destroying the very qualities of life which are attractive to investment and vital to our environment.

3. *Patterns of growth that respect our traditional landscape must replace sprawling growth.*

   Traditional settlement patterns, with compact development gathered around a town common and with sharp distinctions between countryside and city, are images that help define our Massachusetts landscape.

4. *Traditional economic uses of the land have long-term benefits to all and should be preserved.*

   Natural resource-based industries such as farming, fishing, forestry and aquaculture diversify our economy and preserve our "working landscape".

5. *Decent housing for all citizens can be provided while protecting natural resources and our traditional landscape.*

   Diverse opportunities for housing provides increased access to communities and neighbourhoods for all people and strengthens their traditional character.

6. *Unique and fragile natural areas must be protected.*

   Some areas, such as wildlife habitat, fresh and salt-water wetlands, coastlines, aquifers, lakes, and rivers are more fragile than others, and need special attention.

7. *New development should respect tradition in the landscape and enhance the character of the community.*

   Communities and neighbourhoods represent the collective aspirations of generations. Creative new development does not necessarily have to mimic the traditional, but should respect the context and make a positive contribution toward enhancing the character of the community.

8. *The rate of growth must not be allowed to outstrip our ability to provide services vital to the health of our communities.*

   In addition to schools, police and fire protection, the environmental costs of services that directly affect the landscape, such as roads, sewers, water, and solid waste disposal, must be anticipated and the construction costs financed in an equitable manner.

9. *We should have access to the diverse landscapes of the countryside and coastlines.*

   The countryside and coastlines are part of our Commonwealth, and should be available for all to enjoy.

10. *Stewardship and respect for the land should be taught to present and future generations.*

    The concept of sustainability means to manage resources so that they yield benefit to present generations while maintaining their potential to meet the needs of future generations. We have no right to invade the capital represented by our land, and we must ensure that our children are instilled with the same feelings of stewardship.

As well, the "vision" paper presented by the Friends contained several reasons why immediate action was necessary. Although the reasons differed in detail or degree from the situation in Prince Edward Island, the tenor of these reasons struck a response chord. Once again, we quote from the "vision" proposal made by 1000 Friends of Massachusetts:

Why We Must Act Now

If we don't:

> *All of the historic landscape of Massachusetts will end up looking much the same.*
>
> *Unplanned metropolitan expansion is changing traditional settlement patterns, resulting in a homogeneous landscape of sprawl. In many parts of the state, there is no longer a clear delineation between city and countryside. Except for the white and green signs at the border, one suburb is indistinguishable from the rest. The fields, forests, open shorelines, and smaller towns that characterize rural Massachusetts will disappear under incremental development.*
>
> *Small towns will not be able to meet the demands for services.*
>
> Our network of roads makes it possible for us to live further away from our work in the cities. Coupled with the relocations of large companies well out into the suburbs or even rural areas, small towns already find themselves straining to meet the demand for new housing and accompanying services. Since Proposition 2 1/2 limits a town's ability to raise property taxes to pay for schools, roads, fire protection and police, towns will feel compelled to raise the money needed by rezoning for commercial and industrial uses. In the absence of any kind of plan, zoning for revenue enhancement can quickly destroy the integrity of a town.
>
> *Infrastructure costs will become prohibitive*
>
> We are not investing enough to maintain the infrastructure we already have: 74% of the road miles in the Commonwealth are classified "deficient". Forty-seven per cent of the bridges are "substandard", with 19.5% listed as "functionally obsolete". And we are also building new infrastructure without assessing its effects on the character of a neighbourhood, community or region, and on long-term maintenance costs.
>
> *Unacceptable traffic congestion, "gridlock", will be as common in the country as in the city.*
>
> The new settlement patterns exacerbate our addiction to the automobile. Many roads are at capacity, and usage of the term "gridlock" has become commonplace, not just for urban areas, but for suburban streets as well.
>
> *As growth in our resort regions destroys their appeal, the annual $14 billion tourist industry will be further threatened.*
>
> Prosperity has enabled the second home market to increase more rapidly than ever before, threatening the most basic appeal of our resort areas: the natural resource base. Over the last ten years, 30,000 building permits have been granted for Cape Cod. It took three centuries to develop 70,000 acres on the Cape. At the current rate, it will take only three decades to develop the remaining 140,000 acres of developable land. If seasonal gridlock and over-development is not controlled, the tourists will go elsewhere.

Even fewer people will be able to obtain decent and affordable housing.

As land becomes scarce, escalating prices exclude a larger portion of the population from the housing market. Employers find it increasingly hard to house, and therefore attract, new employees. In the MAPC region between 1980 and 1986, incomes doubled, but housing prices tripled. Only the very well off could afford homes, while all too many low and even moderate income people have literally ended up on the street. In the Connecticut River Valley, housing prices rose 131% between 1980 and 1987.

Acquisition of open space and farm development rights will eventually grind to a halt.

The housing demand increases speculation, raising the price on open land, which in turn threatens natural resource-based industries such as forestry and farming. Town and state efforts to preserve land in its open state for scenic and recreational purposes face the same high prices, tragically, at the same time state money for land acquisitions has been drastically reduced. Although they are trying, acquisition by private organizations will never be able to meet the demand. Between 1981 and 1986, over 4000 acres of farmland were lost in the fertile Connecticut River Valley alone. Last year, 38 farms were saved under the state's Agricultural Preservation Restriction Program, but this year, 100 farmers have applied and the state ha no more money to allocate to the program.

There will be fewer and fewer opportunities for creative planning, and development costs will rise.

Zoning is locked into the assumptions of earlier decades. Large-lot zoning, once considered a way to control growth, is now seen as land consumptive and exclusionary. Zoning itself was created to separate conflicting uses such as factories and residences. We now realize that insisting on these separations severely restricts creative development.

Fundamental flaws in the Commonwealth's zoning and subdivision enabling statutes, such as "grandfathering", will continue to undercut a town's creative attempt to accommodate development in patterns that respect its traditional character. Town planners find themselves in reactive positions; they have few standards and little opportunity to place their decisions on a particular project in the context of the entire town. Zoning is implemented without any overall plan.

Local control will become an anachronism.

Planning funds available to communities fell from $1.3 million in 1976 to $250,000 in the early 1980's, barely enough to fund about nine Master Plan updates per year. Planning has largely ceased to happen at the local level, and where there is no planning, "home rule" becomes an empty slogan.

But the threat comes from outside of the town as well. The cumulative effect of unpredictable, incremental growth effects entire regions. With no standards or accountability between local, regional and state jurisdictions, efforts to coordinate growth are undermined and towns are defenceless in the face of inappropriate development along adjacent town borders and as well as within its own borders.

Although we did not have the opportunity to meet with officials from this organization, we felt its formation sufficiently important to incorporate these aspects of it in our report. Clearly, the various state and local initiatives have not been sufficient to satisfy citizens of Massachusetts concerned with land use issues and the result has been the formation of a comprehensive group to generate interest in the public and to push for changes.

Cape Cod, Massachusetts

On September 14, 1989, we met with Mr. Armando Carbonelle, Director of the Cape Cod Planning and Economic Development Commission. We also met with several members of his staff, including personnel in the computer mapping division and the water resources coordinator. Later in the day, Mr. Carbonelle gave us a guided tour of many areas he had mentioned in our discussions, including points on the rail trail and the sand dune system under the protection of the National Park Service.

In many respects, Cape Cod, Massachusetts is not unlike Prince Edward Island. Size is comparable, for one thing. The sand dunes and seaside vegetation are visually akin to the north shore of Prince Edward Island. Tourism and fishing are leading sectors in the economy. Unlike Prince Edward Island, "The Cape" does not have a significant agricultural component in its economic base. Moreover, its proximity to such large urban centres as Boston places far greater pressures on the Cape. However, to *see Cape Cod now is in many respects like looking at a futurist Prince Edward Island - and a catalogue of the problems now facing the Cape does not bode well for our years ahead.*

There are 180,000 winter residents of the Cape Cod area and as many as one million on any given day in the summer. Barnstable, the largest town, (where the offices of the Cape Cod Planning and Economic Development Commission are located) has a winter population of under 40,000; in summer, it averages 100,000 - 150,000 people.

Cape Cod has 15 towns, each with a Master Plan; most of these plans are now 20 years old.

(Mr. Carbonelle pointed out that in Massachusetts there are 351 communities with individual planning boards. These are composed of people who often do not have the time or resources to do a good job of protecting the land. Because it is such an unrewarding task, many people are there because of a vested interest. People who are trying to protect their towns often leave these boards due to frustration.)

Water is a big concern on the Cape. The supply has been of concern for some time. The airport and much of the development in Hyannis are on top of the best water supply. Some possible future supplies are not being protected now. Large sources of water have been lost due to contamination in places. Some landfill sites for garbage are contaminating the water supply. Lack of land use planning has meant the groundwater supply is highly susceptible to contamination. To predict future groundwater requirements, zoning regulations are now being looked at to see what the requirements will be. Nitrogen levels are becoming a problem from residential practices. At 10 parts per million, wells are closed. Home wells in the area are running at 5 and 6 parts per million.

Municipal solid waste disposal and hazardous waste disposal are other concerns we discussed. People in the U.S. are paying up to $100/ton for solid waste disposal, we learned. Cape Cod has landfill sites in each town and there is a mass-burning incinerator located off the Cape.

There is a lot of experimentation now underway regarding garbage disposal on Cape Cod as they would like to close most of the landfill sites as soon as possible.

Recycling is done but the marketing side of it has not been developed very well as yet. In future, a large portion of trash will go by railway on a special railcar as the disposal plant is located at a railway station. The disposal plant is producing some electricity, but pollution is still a concern.

The traffic problem was analyzed in relation to hauling garbage. At present, residents can take their own garbage to a landfill site where a fee is paid or they can buy a permit for $20 that enables them to dispose of waste in a container. Containers are then taken to the landfill site by commercial haulers.

Cape Cod was now starting to have similar-type shopping to Freeport because of the ample retail opportunities arising from seasonal residents and visitors. Retail growth was very displeasing to some residents, Mr. Carbonelle noted.

Traffic is one of the biggest concerns. Traffic engineers are trying to work on some solutions. There is no room to add roads and no desire to do so.

The Cape Cod Traffic Counting report prepared in 1988 by the Cape Cod Planning and Economic Development Commission indicates the magnitude of the problem. The Cape is reached by vehicle using either the Bourne Bridge or the Sagamore Bridge. According to this report "bridge traffic volumes increased over 10% from the summer of 1987 to the summer of 1988. The summer daily traffic using the Bourne and Sagamore Bridges in July and August surpassed 100,000 vehicles per day for the first time." The study showed the growth rate in traffic volumes on all roads in the Cape had increased annually by 4 - 6% since 1984. A change in late August of 1987 that allowed motorists to travel a limited access highway directly to the Bourne Bridge meant a 30% increase in Bourne Bridge traffic from August 1987 to August 1988.

The Cape is also experiencing problems with respect to employment. Traditionally, there has been high unemployment. Now they need labour during the summer. Waitresses often come from as far away as Ireland. A study on "Affordable Housing on Cape Cod" noted (at p. II-3): "Pay scales on Cape Cod are widely recognized as being low relative to other nearby labour markets, let alone relative to high resort-area living costs. This characteristic is not uncommon for areas where people want to live *in essence, part of one's "pay" is the bonus of living there.* Other examples are San Francisco, Oregon, New Hampshire, Boston and Hawaii." [Emphasis added.]

Coupled with a seasonal labour shortage, there is a shortage of affordable housing even for the "middle class". A price of $150,000 for a quarter-acre lot was cited.

An "economic base" profile was done in 1987 to determine where the money comes from. The largest single sector was retirees, who contributed 26.6%. The fastest-growing age group is those over 80. Studies in health care for the Cape have been completed to deal with the needs generated by this factor. The retirement population has become a tremendous force. Another 21.8% of the money comes from "sandbirds", people who spend the summer season and have property on the Cape. Tourists account for 26.4%. The remaining 27.2% is comprised of manufacturing (9.7%) and other (15.5%).

Mr. Carbonelle noted that Cape Cod has had a lot of damage done quickly. Politically it was very "sleepy". People did not want to talk about problems. "Growth was good", everyone said. He suggested a planning initiative about 1985, when he saw what they should be doing and what they should anticipate for the future. The response, at that time, was "Why? What's the problem?" The Cape Cod Commission Act had absolutely no support when it was introduced 3 years ago; now the public is in favour. Homebuilders and developers are against government regulations. They feel this will hinder their economic benefits. Residents of Massachusetts (who do not live on the Cape) felt this was a way of keeping them out but property owners want to protect what they have.

Computers are now used for mapping and traffic problems. Computers have been found to be very effective in land management, Mr. Carbonelle told us.

Preserving access to beaches has become important. Upland property owners own right to the water and under the water, but there is a public right to trespass for fishing, navigating and hunting.

The rail trail has been in existence for a decade. It is a paved bike trail; all other forms of recreation are not encouraged on these trails. The cost is picked up by the State.

There are also biking and separate hiking trails at the National Seashore. The National Seashore area was designated solely to protect a sensitive area. The National Park Service physically maintains and provides access to the area. It has built interpretative centres and other services. Certain development is allowed, with limitations in the Seashore area. Some private, commercial businesses which were in existence prior to the establishment of the park were allowed to maintain their businesses but not to expand. The National Seashore Area consists of 44,000 acres but some of this is under water. There will be no more development. Property values have risen to the point where a house built at a cost of $18,000 in 1960 on a lot size of 100 feet x 100 feet is now assessed for $530,000. The park has 5 million visitors a year and both waste disposal and water quality are problems.

There is erosion on the coastline of 2 1/2 - 3 feet per year; engineering methods to prevent erosion do not work so they are not used.

Our tour provided us with the opportunity to see a number of the seashore communities. Many had massive cottage subdivisions. The cottages all had individual wells and on-site sewage systems. Properties were extremely valuable, we learned, but in many places, the cottages were "tacky" in appearance.

Towns had beaches that were free to local residents, but out-of-towners paid a parking fee of $10.

Growth management, protecting the character of the area, protecting the natural environment, safety and traffic were all major areas of concern. Another issue under discussion was tourism: what is a good tourist?

Mr. Carbonelle felt that the Green Phenomenon has a tremendous tourism appeal. *The green tourism approach means that people are encouraged to appreciate what they have instead of trying to adapt themselves to what they think tourists might want. He felt tourism should play-up what is natural to the area and make it available for tourists to see.* Tours of a potato farm or a tobacco field were examples. He also stressed *there is a very great value in telling people they live in a beautiful place.*

He pointed out to us that Martha's Vineyard and Nantucket, both nearby islands, have regulatory controls to protect their landscape. Nantucket has a building design code that is more restrictive than any other place in New England.

Amherst, Massachusetts

On 15 September we met with Mr. Randall Arendt, Associate Director for the Centre for Rural Massachusetts in Amherst, Massachusetts. Mr. Arendt is a recognized expert on planning with emphasis on the preservation of rural landscapes. In fact, the professional literature and other experts we met led us to believe he is the "guru" of rural landscape planning. Mr. Arendt has been invited to lecture on this subject all over North America. (He has already visited 8 Canadian provinces, but Prince Edward Island has not, as yet, been on his speaking roster.) He has authored many articles and is among the co-authors of *Dealing with Change in the Connecticut River Valley: A Design Manual for Conservation and Development,* a book that uses actual development projects as case studies for rural planning and that is considered a keynote publication in this area. Once our meeting had been scheduled, Mr. Arendt provided us with sufficient materials that we had a "briefing book" enabling us to come well prepared for our session with him.

As for the Centre for Rural Massachusetts (CRM), we learned that it is a branch of the University of Massachusetts at Amherst. It was established by the State Legislature in 1984 and conducts applied research into special problems faced by small communities. CRM also teaches practical skills to help town officials prepare and implement new programs for the effective management of change. It provides technical support for the broader planning community of regional agencies and consultants who frequently work with the CRM on implementation of models and concepts developed by the Centre's professional staff. In 1989, CRM was selected to receive one of fifteen National Preservation Honour Awards from the National Trust for Historic Preservation for its work in cultural landscape protection. It's Public Education Program in Creative Rural Planning was honoured as the winner of the 1989 Outstanding Planning Program award by the New England chapter of the American Planning Association.

The central thrust of the concepts put forward by Mr. Arendt and the CRM call for open space zoning and cluster housing using a creative development scenario.

One of the articles we reviewed in advance of our meeting provided the contrasts between a conventional development scenario and a creative development scenario. Conventional development was said to be characterized by the following:

- Densities and setbacks of new housing are unrelated to existing historic patterns.
- Housing is located in the middle of farm fields. Large-lot (one-acre, 100-foot frontage) residential subdivision of farmland occurs on new subdivision roads.
- Houses are located adjacent to water bodies, causing visual and environmental damage to waterfronts.
- Strip commercial frontage development is put along existing state highways.
- Unregulated parking lots destroy small town character.
- Large illuminated signs, parking lots, and roadside clutter are set down along state highways.
- The sprawling pattern of new development is alien to a town's historic settlement pattern.
- Typically, there is total destruction of farmland, rural character, and visual quality.
- Development uses excessively wide subdivision streets (30-foot paved width) and overhead utilities.

On the other hand, the creative development scenario might have such features as the following:

- New development reflects the existing settlement pattern and the area's vernacular architecture.
- Residential lot sizes vary from 10,000 square feet to 20,000 square feet, and multifamily, attached housing is built to resemble traditional farmsteads with rambling, attached houses and barns.
- Zoning is modified to allow lot sizes and setbacks similar to the existing village.
- Architecture of new commercial development is compatible with the village.
- Farmland and open space surrounding the village are preserved by clustering development at village edges.
- Commercial development is clustered in woods and at major intersections.
- Parking and storage are located behind buildings.
- New commercial structures reflect the traditional architectural character in the area, forming a strong building edge along the street.
- Moderate road widths are used; these are roads that avoid farmland and fit with the topography.

Mr. Arendt pointed out to us that standard zoning regulations absolutely destroy flexible development. "Let soil surveys tell you which way to grow" was his advice. With cluster development, sewage systems can be either individual systems or one that services the entire area. The houses can be put on the poor quality soil and the septics on the good soil.

Mr. Arendt strongly recommended homeowners' associations in subdivisions.

He pointed out to us the relationship with roads. For example, fatality statistics bear a direct relationship with strip development. Narrower streets and roads discourage speeding in developed areas. Streets in New England are 18 feet wide; anything wider must be built and paid for by the developer.

During our meeting, Mr. Arendt showed us portions of the slide show that is a part of his presentation to various groups. It is a visual learning experience that we felt should be shared with Islanders who want to learn of ways that rural landscapes can be preserved without sacrificing development and growth.

In our discussions, the subject of development rights arose. (This is a method whereby land is preserved in an undeveloped state by compensating the owner for the loss of the right to develop the property in exchange for a covenant against development.) Mr. Arendt indicated that development rights may be bought or *transferred*. Some areas have implemented programs to buy development rights to preserve open spaces. This, we understand, was expensive. Mr. Arendt indicated such a program is not as successful as a transfer program because no one wants to live next to the development areas. A program to transfer development rights has been successfully developed in a number of areas.

An alternative to a program for transferring development rights is clustering, with a mandatory open space development design that puts development on the land that is least useful to the farmer. Mr. Arendt felt education is the key to this type of planning. People have to see and understand how strip development etc. is going to affect them in the future.

He also suggested consideration be given to an "upper limit" with an analysis of the area to decide what should be conserved and what should be developed.

Another suggestion was a "rainbow coalition" of developers, environmentalists, conservationalists and businessmen to form a "Friends Group".

He recommended that the Province have an Island conservation and development plan. Where do we want to be in the year 2020? Plotting future development is very important. Failure to do so can create enormous problems. He cited Cape Cod as an area where there is too much development and they "can't afford to buy back what they have already lost".

Vermont/New Hampshire

No meetings were scheduled for September 16 and 17, but we had a pre-scheduled route planned to enable us to see a number of locations in these two States that illustrated many of the points made during the meetings of the week.

Both States have a distinctive countryside with a rural heritage that is now a foundation in a thriving tourist industry.

We stopped on-route for an unscheduled "event" - unscheduled in terms of our calendar. It was a country exhibition where we were pleased to see a sizable quantity of 50-lb. bags of potatoes, all marked with the logo of a Prince Edward Island potato producer, awaiting on-the-spot processing at an open-air french fry booth!

Of particular interest was a shopping centre that was appropriate for the area. From the adjacent road, it looked just like the large red barn and matching silo it once was. Between the road and building, was green pasture that swept around the front and side of the mall. Along the roadway was a single row of mature trees and a split-log fence. Only a few subtle clues indicated the building was anything but infrastructure for a prosperous dairy farmer! The chief indication to the contrary was a series of large white letters that wrapped around and down the silo; these spelled out the single word "S-H-O-P-P-I-N-G". Lesser hints of the building's true purpose were found in a smaller fascia sign on the "barn" where single letters spelled out "hardware", large glass doors at one end of the building, and a greater number of small multi-paned windows than housing for cows would warrant. But, where was the inevitable parking lot and the cars? The answer was soon obvious: ample parking was provided behind the "barn". It was one of the best examples of building design that is compatible with local landscape that we saw on our travels.

But we did see other examples, particularly in sections of Vermont that are subject to strict design controls. We saw another McDonald's without traditional "Golden Arches": again there was discreet signage and an exterior very compatible with an adjacent, historic inn. Service stations were, on occasion, designed in traditional styles in keeping with New England's heritage.

Our itinerary called for us to complete our weekend circuit in Albany, New York, in preparation for a meeting there on Monday. We were to pay a visit to the Village of Waterford in New York State on the way.

Waterford, New York

While we did not have any meetings scheduled in Waterford, we had learned of it through professional planning literature. A community on the Hudson and Mohawk Rivers, Waterford is billed as America's oldest village. At one time it was the terminus of the Champlain and Erie Barge Canals and it was an important centre of trade and industry. But changing economic patterns had led to its demise as a manufacturing hub. A recent multi-phase project that spanned some six years was aimed at extensive re-development to attract both tourists and new business.

The project, as it was described, included several innovative ideas, such as small outdoor exhibits that enhanced the historic background presented in several theme parks located near canal locks.

Unfortunately, we were somewhat "disappointed" in what we found. After some discussion, we came to what we felt was an important conclusion. Our "disappointment" was rooted in our comparison of Watertown with other places we had had the opportunity to visit during the preceding week. As we had no local tour guide to explain to us what had been accomplished, this was our standard for judging Watertown.

(It was an important lesson for us and one which needs to be recognized by anyone involved in landscape issues. Where an individual is familiar with an area, development is judged on the basis of how it compares with the site as it was before it was developed or re-developed. Much of the development on Prince Edward Island is judged locally by finding it is "better" or "worse" than what was there before; whereas, someone unfamiliar with what existed before, judges the landscape in its current state of development by comparisons with "elsewhere").

Rensselaerville Institute, New York

On 18 September, we met with Mr. David Pilliod, Director of the Office of Local Government Services for the New York State Department of State in Albany, New York.

Mr. Pilliod discussed with us a number of issues of concern in regards to rural New York. He explained that the State of New York is one of the most rural states and it ranks sixth in the U.S. for agricultural production. The agriculture industry is in serious trouble in the State, but he felt this will be turned around. The small family farm is in very serious trouble. Farm-to-market roads are so poor (because of bridge conditions) that small farmers are going out of business because they cannot get their product to market. Young people are moving away from rural areas. Those who are moving in (who can afford it) are residents only: these people commute to work in urban areas or work from home by computer.

In terms of rural areas where tourism is popular, he felt that the Catskills Mountains are "gone". People in that area feel they are in control and can stop development; but professional planners disagree. The Catskills were not protected; the Adirondacks are, so their attractions for tourism are more assured.

We asked him about the development costs with respect to sewer and water. He told us that impact fees are now being tested in a small suburb just outside Albany. They have largely been used for "survival", rather than infrastructure. (Presumably, that meant impact fees have been used to raise revenue to ease budget problems rather than as a means of financing future infrastructure development or improvement.) State Government will probably start charging for its services. The loss of federal funding has resulted in a deterioration in regional planning but economics will force more regional planning. Because of "home rule" (i.e. the autonomy of individual communities that compete with one another), many industries have been lost to communities outside the State.

Mr. Pilliod then accompanied us to the Rensselaerville Institute, in Rennselaerville, New York, not far from Albany, where we met the Senior Project Director for the Institute, Jane Schuatz. Ms Schuatz is the author of *The Self-Help Handbook*. The Institute is a private educational and research organization that has been working with small communities to enhance their self-help capacity. Professional literature describing the success of the New York State Self-Help Support System had resulted in our seeking out this meeting. While New York is usually perceived to be an urban setting, much of "upstate" New York is among the most rural areas in the United States. Small communities, many the size of Island towns and villages, depend on tourism for seasonal jobs and these communities lack the financial or personnel base needed to provide the kind of planning and infrastructure required for "peak" populations during tourist seasons or even for local, resident populations.

The problem that gave birth to the Self-Help Support System was the need to improve water and wastewaster systems. One publication from the Office for Local Government Services stated the need in these economic terms:

> The need for improvement in water and wastewater systems is well documented. In New York State water systems alone, reliable estimates put capital needs at over 6 billion dollars (in 1980 dollars). Rural systems (serving 10,000 people or less) account for 1.2 billion of this total. For wastewater systems, the situation is even worse. *Documented* needs exceed $10.2 billion, with another $3.75 billion estimated. Despite the need, federal and state programs do not provide sufficient funds to solve these problems - especially in our smaller, rural communities. [Emphasis original]

The Self-Help Support System began in 1983. While the focus of the program has been assisting small communities with water and/or wastewater problems, the principles taught in the system can be equally applied to many other community projects. Selfhelp is seen as "an important alternative for many communities with urgent needs and very limited financial resources". It begins "with the idea that local communities have traditionally done many things for themselves, *recognizing the principle that the best way to get money is to need less of it"*. [Emphasis added]

The program started off by doing case studies in small rural areas where $10,000 or so could be saved. Large areas could probably save much, much more, but organized labour and manufacturers etc. would be unhappy so, politically, it was felt wiser to stay with the small communities with limited budgets, we were told.

Self-Help Support is a coalition of many resources. Communities come looking for help and the program unleashes its expertise, providing technical advice on engineering, planning, financing and community organization. They do not work regular 9 to 5 hours; there is no boss; everyone works; everyone takes credit. The Institute has identified people within the Government system who are sympathetic to this kind of approach (such as government employees who are willing to work after hours and on weekends.) Self-help taps *human* resources rather than money. People have to feel their "quality of life"; once they have defined it, they will apply it to their benefit.

The group analyses the project in terms of readiness and potential. The challenge is to find people in the community who can "pull off" the project using as many local resources as possible.

Government is now starting to attempt to mobilize young people; they provide inexpensive labour and they are eager and ambitious. Rather than have government officials do something, they mobilize young people in the particular area to do things the way they want them done. The program needs "doers" not "thinkers".

The *Self-Help Handbook* urges communities to analyze the problem that needs to be solved in terms of possible solutions. (For example, it describes some 21 different small wastewater systems for small communities and rural areas.) It also urges communities to make all possible use of local resources (for example, using local volunteers or unemployed residents at low pay for certain jobs rather than including all labour components in a contracting package.)

The Self-Help Program also provides small communities with access to interim project financing. This money is used to pay for technical and construction services, supplies and equipment during the engineering and construction phases. A loan of $500,000 to the Rensselaerville Institute in 1986 enabled the Institute to establish a self-help revolving loan fund. Communities that qualify can obtain low-interest, short-term loans up to $100,000. The loans are repaid to the revolving fund once the project has been completed and the community has obtained long-term, conventional funding from banks with the completed project as collateral.

Another feature of this program is that a series of model documents (such as a sample easement agreement, a model agreement for engineering services etc.) have been developed for use by small communities.

By March of 1989, after a series of workshops held over a two-year period, some 40 small communities were working on water and wastewater projects under the Self-Help Program. Similar projects have been developed in a number of other American states, including seven others in the Northeast.

Seward, New York

On September 18, 1989, we also drove out to the hamlet of Seward in the Catskills to see an example of a rural community with a waste water project established through the Self-Help Program that saved local taxpayers considerable amounts of money. (The cost of the wastewater system had been reduced from an estimated $530,000 to $165,000 through Self-Help.) In Seward, we met with Mr. Carl Barbic, Seward Township Supervisor, who provided us with background information on the local wastewater disposal problems and how the community solved it after living with the problem for many years.

Mr. Barbic told us the sewage problem was unbelievable. In one field there was raw sewage to a depth of two feet. The community could not afford an off-site system that would solve the problem so it approached the State government for financial aid. Not only was the request denied, but the State officials pointed out the State of New York owned property within Seward and in the event the State property was contaminated by the raw sewage, the State would take legal proceedings against the municipality.

The community learned of the Rensselaerville Institute and a self-help project started. The project - an underground sand filter system - had just been completed shortly before our visit. Mr. Barbic stressed that incredible amounts of volunteer time went into the Seward project; this was a necessity for any SelfHelp project. The Institute stressed the need for getting the best expertise for the least money. Do not hire a firm just because they are local. Shop around for the best deal for the dollars spent. He pointed out that the needs of little communities can really be forgotten when they have to compete with big urban areas (for example, New York City) for attention and dollars. The Self-Help Program, he told us, had given the community a new sense of pride and a healthier community. Property values had risen at least as much as 20% since the project was completed.

We found the meeting in Seward quite an "eye-opener" from two perspectives. It illustrated to us the dramatic contrast in attitudes between the two jurisdictions. We felt it difficult to envision provincial politicians in Prince Edward Island saying "no" so bluntly to a municipality and then coupling this with the threat of a lawsuit. Secondly, the Seward example pointed out how "progressive" many Island villages of comparable size have been in installing wastewater systems over the past two decades.

Tug Hill Commission, Watertown, New York

On 20 September, we met with Messrs. Ben Coe, Waring Blackburn and Dan Beevers of the Tug Hill Commission in Watertown, New York. Tug Hill is the name given to a region in upstate New York between the eastern end of Lake Ontario and the Adirondacks. It consists of some 60 municipalities with a population of 90,000 scattered over 2,000 square miles. The largest community has a population of 7,000, while the smallest has 30 residents. There is a large forest watershed and agricultural areas where dairy farms predominate. Some southern parts of the region are becoming bedroom communities for more urban areas; the northern portion is involved in conflicts between agriculture and development occasioned by an expanding military base.

We were attracted to the Tug Hill Commission because of its circuit rider concept, developed to meet the needs of rural communities governed by part-time public officials. The Tug Hill Commission was established on a "temporary" basis 16 years ago to provide technical expertise in land use types of issues for the communities. Different levels of assistance are provided through different types of "circuit riders" who serve anywhere from 9 to 19 communities.

Members of the Tug Hill Commission explained to us that the power to control the use of land lies at the local level. This poses a difficult State problem because part-time people with little or no experience in land-use planning are in charge of zoning. Urban areas are looking at the Tug Hill region as a waste dumping site. The area has a lot of wetlands. Rapid growth and development due to the presence of the Fort Drum military base has led to other development, as well as land speculation.

The Fort Drum experience was cited to us as an example of how growth and development can produce new problems. Watertown had little or no development before the military base was established. There was a 12% unemployment rate. The base was opened as a training base for emergency preparedness: the troops can be anywhere in the world within 24 hours. Location of the base in the area was hailed as the answer for the unemployment problem. The population grew to 30,000 and several large shopping malls etc. were built. There had been planning to accommodate the base, but many factors were overlooked. Locating the base in the area meant other goods and service industries wanted to move in, so the expansion proved to be more than what had been anticipated. This created unforeseen problems and, in addition, many social and racial tensions developed between base personnel and local townspeople. So, while the arrival of the base solved one problem, it created others. The development that has occurred as a result of the Fort Drum project is "aesthetically a disaster", we were told.

The Tug Hill Commission itself has no power or authority. They study, analyze and advise. They try to work by using the grassroots approach. The Circuit Riders serve as communication links to the local people. It is a 2-way process because it keeps the Commission informed of what is going on in rural areas. The Circuit Riders usually work out of their homes and live in the area they serve.

Specialists work with communities to develop local economic development projects. They educate residents to the pros and cons of tourism. After learning the facts, local people decide if they still want tourism. Some of the community economic development projects aimed at tourism have included: highway theme trails to bring a focus to the "unit" rather than "individual" attractions; a snowmobiling project (snow is a major resource to the area - some parts get 40 feet per year) using trail management plans (with the trails being maintained by volunteer groups such as service clubs); cross country skiing projects (a number of trails have been developed and ski races, which bring people in, are now being held); and farm and forest tours especially designed for tourists using bus tours. Several projects in the agricultural sector have also been initiated, including a cooperative for maple syrup producers as well as the introduction of sheep and deer farms.

Water is the most significant resource in Tug Hill. Although there are no restrictions on land ownership, "Forever Wild" designates an area as wildness with no management and no development. The wilderness is the core of Tug Hill.

There is growing recognition that the visual aspects of land use control must be used to protect villages and hamlets as development pressures from both the Thousand Islands area and the southern part of the State are being felt in the Tug Hill area.

St. Lawrence - Eastern Ontario Commission

On 20 September, the Tug Hill Commission officials also arranged for us to meet with Mr. Rod MacNeill of the St. Lawrence - Eastern Ontario Commission, which was formed in 1979 for preservation and economic development in the region.

The Commission helps communities to develop plans to protect coastline regions. If the community does not enforce these plans, they are the losers. The Commission assists in writing local regulations and aids in implementing local coastal management programs, but it cannot enforce provisions. All levels of government use one set of policies for coastal management.

The Commission also tries to assist tourism and recreational development as well as coastal and environmental management. They developed the Seaway Trail Inc., Along the Trail into the Past, and bicycle trails, for example. (The Seaway Trail is analogous to the three scenic drives in Prince Edward Island, but the Commission has been a catalyst in developing an action plan for the Seaway Trail. Along the Trail into the Past is the Seaway Trail from the heritage standpoint.)

The Commission is also involved in special projects such as sand dunes which are not yet protected under State law. The research and planning activities of the Commission deal with historic resources and fish and wildlife information.

The main power given to the Commission is that of project review although the Commission has received considerable compliance from developers.

Province of Quebec

Because of "labour unrest" in the Quebec public service at this time, it was not easy to arrange meetings for the final stop on our tour. However, we were fortunate in arranging a meeting with Monsieur Jean-Louis Perres of the Ministry of Municipal Affairs for the Province of Quebec. Monsieur Perres briefed us on the current program to preserve agricultural land in Quebec including the land tax system that accompanies such preservation.

Quebec has land use plans in place to protect what are known as "green zones", i.e. areas zoned for agricultural use. These zones were defined in 1978 and lesser tax rates are applicable. For tax purposes, "farmers" are defined.

We understood from the discussion that some agricultural land near municipal areas is zoned "white". The farmers pay taxes at the green zone rate, but in the white zone, land can be sold for development if the adjacent municipality agrees that such development should occur. Where land in the white zone is removed from agriculture, the taxes not paid over the years because of the agricultural use are payable on a retroactive basis.

Regional councils that consist of approximately 25 municipalities in an area have been established to make decisions on an area basis and the approval of the regional body is necessary before a landowner can develop land.

We understood from the discussion that the tax system is working well, although there is room for improvement.

In more general discussions we learned that Quebec has its own version of a "non-resident" problem: some lakes are almost totally inaccessible to the general public as land around them is privately owned by people from Montreal [and, no doubt, other urban centres].

Additional information with respect to land programs and legislation is contained in Appendix D.

Conclusion:

Our out-of-province travel enabled us to learn "on site" of problems similar to what we felt were those emerging in Prince Edward Island. At the same time, we had the opportunity to discuss possible solutions and how successful these solutions were proving to be in other areas. While we concentrated much of our tour in parts of the northeastern United States, rather than in Canadian jurisdictions, we did so for a particular reason. Population density and a number of other variables, combined with a lack of emphasis on "rural"/non-urban planning, in many parts of Canada necessitate looking further afield for "comparable" areas that are facing land-use issues somewhat akin to those identified in this Province. The result of our two weeks on the road gave us a better understanding of the need for more comprehensive land-use planning in Prince Edward Island and a glimpse of what the future can look like in the Province if growth and development are not subject to managed principles.

APPENDIX D

Report on Other Jurisdictions

[In order to determine what other jurisdictions were doing with respect to the land ownership and land use issues most frequently raised in our hearings, we directed correspondence to various ministries in all other provinces with the request that they provide us with relevant information. In particular, we asked about non-resident ownership, preservation of land for agricultural use, property taxation matters and land use planning measures. Although the responses (and, in turn, our summary of the results) are reflective of the scope of the various departments answering our inquiries, we found numerous common themes in both the problems and, in a general way, the solutions proposed or embraced in other jurisdictions.]

Newfoundland:

While we normally do not think of Newfoundland as an "agricultural" province (and, indeed, soil surveys conducted in that province have indicated that less than 1% of that Island is actually suitable for farming), a 1986 report on "Soil and Land Management Program for Agriculture" contained a number of familiar problems. For example, at pp. 16 - 17, the following passage cited some of these difficulties:

> Although the actual number of farms in the province appear to have declined since Confederation, many of the existing and establishing commercial farmers have had to expand their operations to meet the changing conditions. Unfortunately, much of this expansion was not well planned. Little consideration was given to factors such as viable farm size, availability of services, and the advantages of clustering farm developments. *All too often, development was left to find its own course with inefficient and frequently conflicting land use patterns evolving. In addition, much of the prime farmland has been taken out of production through residential and commercial encroachment, cabin developments and other non-farming activities.*
>
> The allocation and development of Crown land was not always well planned. *Many leases and grants were issued for agricultural purposes only to have the land farmed for a short period of time and then removed from agricultural production. The result has been the alienation of thousands of acres of good farmland. The practice of severing granted land into small non-viable parcels, coupled with the practice of issuing small leases with little or no provisions for expansion, has resulted in a severe fragmentation of the province's agricultural land into small private holdings.*
>
> As a result of these problems, *many farmers today are unable to locate enough land on which to expand.* The most seriously affected are new entrants in agriculture who require large unified tracts of suitable land on which to establish a viable commercial operation and existing dairy farmers whose viability is threatened by insufficient available land to become self-sufficient in hay production. [Emphasis added.]

Chapter 95 of *The Development Areas (Lands) Act*, 1970, is legislation that enables the province to designate Agricultural Development Areas. A total of 20 priority areas have been identified using such criteria as soil surveys, market and growth potential and current levels of production. These areas, which contain nearly all the land that is suitable for agriculture in Newfoundland, are felt to possess the best potential for a viable agricultural industry - one which will enable the province to become self-sufficient in food production for those products that can be grown under Newfoundland's soil and climatic conditions.

The designation process was described in the report on the "Soil and Land Management Program for Agriculture" as follows:

> In most of the development areas, land use background studies have been produced. These involved extensive field research including the update and revision of land ownership data, an assessment of current land use patterns, and an assessment of human and economic resources. Fieldwork has been concentrated mainly in the priority areas of Codroy, Robinson's-St. Fintan's, Humber Valley, Wooddale, Musgravetown and St. John's regions since the program was initiated in 1978. Background papers have been prepared for all but 3 of the 17 areas.
>
> Following the preparation of land use plans, it is proposed that the major agricultural areas be officially designated and regulated under Chapter 95 of The Development Areas (Lands) Act, 1970. This will mean that land use not compatible with agriculture will be restricted or regulated. At the present time these controls are in place in the St. John's and Wooddale Agriculture Development Areas. Land use studies conducted to date have identified a need for similar controls in the Agriculture Development Areas of Codroy, Robinson's-St. Fintan's, Humber Valley, Springdale, Musgravetown and Winterland. It is hoped that these areas will be regulated in the near future. In the remaining agricultural areas conflicting pressures are not so great yet as to warrant regulatory controls. A continuing program of monitoring these areas is in place.
>
> Areas officially zoned pursuant to the Development Areas (Lands) Act are controlled through development control regulations that have been developed to restrict non-compatible uses. Each set of regulations has been designed individually to meet the needs of the local area in which they apply. *The main intent of the regulations is to preserve and protect land from conflicting uses that irreversibly remove it from agricultural production.* [Emphasis original.]

Using this legislation, there has been a "freeze" on agricultural land in and around the capital of St. John's since 1975. The results of this move were explained in the report on the "Soil and Land Management Program for Agriculture" at pp. 20 - 1:

> As with any type of restriction or [*sic*] control on land use activity, many pressures prevail. *Land suitable for agriculture is often prime for other commercial or residential development. These multiple use demands on land,* particularly in the St. John's Agricultural Development Area, *have resulted in a great deal of land speculation.* Developers have, in the past, taken options on land whereby they pay farmers large sums of money just for the right to purchase. Because of the Agricultural zoning the majority of these options have not been renewed. However, development pressures resulting from off-shore oil exploration and development

> have not decreased. The Government's reply to this type of pressure can be summed up in a quote from its recently published Five Year Development Plan 1980-85, *Managing Our Resources.*
>
> > "Land with agricultural potential is too limited in our Province to allow...it to fall into the hands of speculators operating under the misapprehension that it will eventually be re-zoned for non-agricultural development purposes. It is the firm policy of this Government that "frozen" agricultural areas will remain frozen."
>
> Not all areas are under the same pressure from conflicting uses as the St. John's Zone. Several designated areas, particularly in the west, are under-utilized. *Land use and land ownership studies have revealed that most of the idle land is owned by non-farmers who show little interest in putting it into production, nor are they willing to sell or rent their land to active farmers.*
>
> Counteracting the idle land situation is of major concern if Newfoundland is to meet its agricultural land needs. To help get this land into production the Government has instituted a limited rental subsidy program which subsidizes the farmer in order to offer a better rental price for rental land. A limited land consolidation program is underway in the St. John's Agriculture Development Area whereby the province may purchase agricultural land to later lease to farmers. In addition, studies have been undertaken in the Humber Valley A.D.A. to determine the willingness of non-farmland land owners to rent them farmland. In conjunction with this, short courses have been offered to explain to farmers and landowners the advantage of these agreements and how to go about arranging one.
>
> *Because land has not traditionally been taxed, there has been no negative incentive to leaving land idle.* In the past 4 years more and more Newfoundland communities are assessing land owners property tax. The government has a policy of exempting agricultural land from taxation. Through the Property Tax Exemption Program, eligible farmers are able to exempt land used for agricultural production from property tax. This program, it is hoped will encourage more idle land to be sold or rented to farmers in order to be eligible for tax exemption.

Other measures were aimed at developing vacant lands for agricultural usage. This objective has centered on Crown lands and the projects were described in the "Soil and Land Management Program for Agriculture" at pp. 22 - 3:

> Although land preservation has constituted a major thrust in the Land Use Program, several other aspects are also very important. The development project program for example, has and will continue to play a very significant role in the planning and allocation of the remaining Crown land suitable for agriculture. Four significant projects have been initiated for the development of large blocks of Crown land for new farming activities. . . . These have been very successful in establishing adequate land bases for a number of the province's existing and new farmers. In addition to those four projects listed above, a variety of smaller areas have been allocated under the Farmland Development Project program. These include such properties as former agricultural stations operated by the Province, Regional Pastures no longer required and properties which have been returned to government through default of loan payments.

> In the case of the larger projects, the capability of the land is assessed and lots laid out to ensure maximum utilization of the land resources. Through the province's farm access road program, roads are planned and constructed to ensure access to these lots. In all cases, the project areas are referred to any government agency which may have a concern for comments and the plans adjusted as necessary. These lots are then advertised and successful candidates selected from the numerous proposals received. When these individuals are approved by the Department of Forest Resources and Lands, they must survey the property before a Crown land lease is issued. Eventually, when the development of these areas reaches a critical point, electrical services will be provided.
>
> In general, the management and handling of land capable for agriculture has greatly improved in the past few years. Hopefully, programs such as land preservation and farmland development will result in the maximization of agricultural production and ensure an adequate land base for agriculture for years to come.

New land legislation has been introduced recently in the Newfoundland House of Assembly. While it would repeal *The Development Areas (Lands) Act*, Bill 53 ("An Act to Revise and Consolidate the Law Respecting Crown Lands, Public Lands and Other Lands of the Province") will be used to continue the freeze on agricultural land. This proposed legislation limits the amount of Crown land that the Minister of Forestry and Agriculture can lease or grant to twenty hectares; areas in excess of this may be leased or granted only with the consent of the Lieutenant Governor in Council. *Current regulations limit the amount of Crown land for recreational cottage use to 1 acre and residential lots to a maximum of 1/2 acre.*

The Crown Land (Amendment) Act No. 46 of 1971 placed restrictions on non-resident land ownership by providing that no grant, lease, license or permit could be made to non-resident persons or corporations in respect to any Crown lands except "for or in connection with an industrial or commercial development approved as such" by the Lieutenant Governor in Council. The Lieutenant Governor in Council could, however, exempt a nonresident corporation from the provisions of the legislation which required publication of all orders in the *Newfoundland Gazette*. A non-resident person was defined in terms of "a natural person who has not been a resident of the province for at least twelve consecutive calendar months immediately prior to the appropriate data of application with the fixed settled intention of making his permanent home in the province." *The Crown Land (Amendment) Act* No. 46 of 1971 has never been proclaimed.

Both the *Wilderness and Ecological Reserves Act* and Bill 38 (proposed new forestry legislation) contain measures to set aside and protect special areas of ecological significance, in the former instance, and for forestry purposes, in the latter. *The Urban and Rural Planning Act* enables lands to be designated for agricultural, rural or open space usage.

Agricultural land is not subject to municipal taxation but there is no provision for property taxation outside municipal areas.

Nova Scotia:

The Province of Nova Scotia investigated the subject of non-resident ownership of land by way of a Select Committee of the House of Assembly. Initially appointed in 1973 and re-established after the 1974 provincial election, the second Select Committee reported in November of that year. Its report outlined what were termed "many thoughts and ideas" that came forward as a result of public hearings. In spite of the time that has lapsed since then, many of these issues contained a number of themes that are still familiar; the "thoughts and ideas were identified in the Select Committee's report, as follows:

> (1) **Land use versus land ownership.**
>
> The most pervasive thought emanating from the hearings was that land use is more important than land ownership. It was the view of many that the issue of land use pertains as much to Nova Scotia residents as it does to non-residents of the Province. The concept put forward was basically that of "stewardship". An example of this is that good productive farmland should be used for agricultural purposes regardless of who owns the land. In respect of this item there was a strong plea for a provincial land use plan or guidelines said plan and guidelines to be at the direction of the Province.
>
> (2) **Provincial and local roles.**
>
> Two views were expressed as to the division of responsibilities in the development of a provincial land use strategy. One view was that of a provincial master zoning plan while others were of the opinion that general provincial guidelines were to be established within which local areas would be provided with the requisite personnel and resources to carry out detailed local plans. This latter view allows more opportunity for community involvement at the local level as is practised with local and regional planning programs throughout the province.
>
> (3) **Definition of "non-resident".**
>
> The difficulty raised by attempting to define "non-resident" was stressed to the Committee. In this respect it was pointed out that for municipal tax purposes a "non-resident" is someone with no permanent place of residence in the province. Those representations that became attached to a definition of non-resident and wished to deal with the ownership by these persons were however prepared to accord special privileges to Nova Scotians who were temporarily out of the province or who inherited land as a result of family or blood relationship.
>
> (4) **Protection of prime recreation areas.**
>
> A number of representations stressed the importance of protecting prime recreation areas for public use, particularly those areas that were ocean coastline or a lake shore. The view was expressed that those who live in Nova Scotia should have access to these resources regardless of ownership and that the right to make use of these resources should not be determined by who is able to pay the highest price. A number of representations suggested that the provincial government should have a first option on all recreational lands that come up for sale while others suggested that the province should make a more concerted effort to acquire a recreational land bank.

(5) The Assessment Act.

Concern was expressed by a number of persons making representations that the Assessment Act was making it difficult for primary producers to keep their land in primary production particularly since this land is usually very attractive for residential, commercial, recreational and other purposes because the assessment on the land will eventually be based on its actual cash value for these other competing uses. If they are allowed to come about primary producers may not be able to afford the property taxes. Suggestions revolved around the establishment of a differential property tax system which would work to the benefit of primary producers while some suggested a homestead exemption for their property. This would be considered a deferred tax which would be paid when the land was sold.

(6) Protection of prime agricultural areas.

While this is related in part to the question of the Assessment Act it was pointed out that high prices offered for farmlands for non-farming purposes made it difficult for farmers to resist an offer to sell or to expand their operations because of the necessary credit required to acquire adjoining land. It was further pointed out that there is good agricultural land in Nova Scotia not being farmed. This land in many cases is owned by resident Nova Scotians. It was considered by some that this was not a proper use of the land and that something in addition to zoning land should be done to insure that the land would actually be put into good agricultural use. Suggestions were made for the province to acquire agricultural land by land banking and leasing it back to farmers and also the provisions of provincial financial assistance to farmers to encourage them to stay in farming and to assist them in maintaining and clearing agricultural lands.

(7) Education program.

A few representations pointed out the need for educational programs to promote a greater understanding of rural resources and opportunities in respect thereto. The point was made that the present educational system often is urban oriented and acts to hasten rural/urban migration. It was suggested that there should be resource oriented programs in high schools and vocational schools.

(8) Tax measures to restrict non-resident ownership.

A number of persons making representations put forward suggestions to restrict the ownership of land by non-residents. This was particularly so in respect of prime recreational land. Reference was made to the tax system in the State of Vermont where the longer the time span or ownership, the lower the tax on the land and also to a differential property tax system which would favour fulltime residents and primary producers. Suggestions were also made regarding a system for boosting assessment on land owned by non-residents by multiplying the basic assessment times a factor value to arrive at a taxable value to which the particular municipality's tax rate would be applied. It was further suggested that a different factor value could be used for various types of ownership; that is, one based on acreage over and above that required for a home. This was put forward as a method of deterring speculation.

(9) The Land Holdings Disclosure Act.

Dissatisfaction was expressed with the existing level of information on land ownership. Suggestions were made for compulsory land title registration throughout the provincial registry offices. The present law of Nova Scotia does not require registration to perfect ownership. The view was expressed that the Land Holdings Disclosure Act was not providing the information on non-resident land ownership that it was intended to do. It was suggested that the penalty provisions of the Act should be more strictly enforced. The penalty for failing to file the disclosure statement required by the Act and the requirements of the disclosure statement is a fine not exceeding $1,000.

(10) The notion of land as an investment.

The main argument expressed in opposition to the control of the sale of land to non-residents was that the purchase of land was an investment. It was stated in many cases that the only retirement income that an elderly person might have would be his land which he had worked for a number of years. If controls were imposed on the sale of this land then that person would be prevented from receiving the highest possible price for his investment and thus would suffer in comparison with those who had invested in stock or bonds or other commercial properties. Although concern was expressed over the extent and danger of speculation in land on planning the use of land and the role of large scale provincial, national and international buying and marketing operations it was equally well admitted that speculation by residents of Nova Scotia is of equal concern.

Ultimately, the Select Committee on Non-Resident Ownership of Land made the finding that "ownership" of land is not the problem. It was the conclusion of the Committee that the problems and difficulties were those of use of land and its taxation. The Select Committee then made several recommendations which were as follows:

(1) The Bill proposed in 1973 entitled An Act Respecting the Approval of Purchases of Land Holdings by Non-Residents not be considered further since the Bill deals with the approval of purchases by non-residents. It is the conclusion of the Committee that the problem is not one of the purchase and sale of land but the use of land.

(2) The Bill proposed in 1973 entitled An Act to Amend Chapter 13 of the Acts of 1969, An Act to Provide for the Disclosure Holdings by Non-Residents and Certain Corporations not be proceeded with. This Bill would impose a tax on the transfer of land holdings to a non-resident purchaser. It is the conclusion of the Committee that this is no solution to the problem since the problem is one of use.

(3) It is the recommendation of the Committee that a Land Resources Board be established under separate legislation which Board will have the authority to both advise the Governor in Council upon the proper use of land in the Province and further will have the authority with Governor in Council approval to designate land within the Province for use as agricultural, recreational, historic, scenic and such other designations as are appropriate under the circumstances. Once the land is so designated by the Board then it will not be able to be put to another use without the approval of the Board. The Board should be composed

of not less than three and not more than five members. The members should be appointed by the Governor in Council and paid such remuneration as the Governor in Council shall determine and should serve for such period of time as the Governor in Council determines. The Board should have province-wide jurisdiction and generally should have the authority to recommend to the Governor in Council guidelines for land use within the Province and methods and incentives for promoting these uses.

(4) The Government of Nova Scotia should encourage the use of land by providing financial assistance for the acquisition of the same and assistance relating to the use of land for the purpose designated by the Board and a form of tax differential where the land is put to best use but is not the most profitable use to which the owner could put it, for example, if the land is prime agricultural land it should be recognized that agriculture is an expensive occupation in terms of development and assistance should be provided to see that this land is used for agricultural purposes rather than being subdivided and sold for residences.

(5) Legislation authorizing municipal units to impose taxes upon land should be changed so that the assessment and taxes paid reflect the designated use. If the land is later sold for another use then the benefit given during the period when the land was used for the designated use may be recovered at the time of sale.

(6) Section 32, Part VI, special development control areas should be removed from Chapter 16 of the Statutes of Nova Scotia 1969. The Town Planning Act, and the powers set forth therein vested in the proposed Land Resources Board. The present Section 32 authorizes the Minister of Municipal Affairs to designate areas of the Province as special development control areas. It is the recommendation of the Select Committee that these powers should be exercised by the new proposed Board.

Since this report of the Select Committee, there continues to be no limits on the quantity of land which may be owned by individuals or corporations, resident or non-resident, in the Province of Nova Scotia. *The Land Holdings Disclosure Act*, S.N.S., 1969, cap. 10, which came into force on January 1, 1970, continues to require that every non-resident who acquires land in the province must file a "disclosure statement" which includes the name and address of the non-resident or corporation, the description of the land holding that is contained in the document of conveyance, the purpose for which the land holding was acquired and "such other information as the Minister prescribes".

The Land Holdings Disclosure Act does nothing more than provide a mandatory means of obtaining information but, we understand that, in practice, the information is "collected on a voluntary basis" and the information is "not complete" and "used for information purposes only", according to correspondence we received on this matter.

Under Section 40A of the *Assessment Act*, R.S.N.S. 1967, c. 14 and its amendments agricultural land (but not buildings or structures) is exempt from property tax. The province pays a grant-in-lieu of taxes to the municipality for this property, based on the residential tax rate. *A change in use tax penalty of 20% of the assessed value of the land is payable if the property owner converts that land to another use.*

In Nova Scotia, the entire province is organized into municipalities: cities, towns and rural municipalities. The *Planning Act*, S.N.S., 1983, c. 9 and its amendments enables both the municipalities and the province to do land use planning and establish land use controls. We have been advised however, that "no provincial land use policies are in effect at present" although there is an interdepartmental committee on land use policy issues with technical expertise provided by the Land Registration and Information Service (LRIS) of the Council of Maritime Premiers. While municipalities may develop municipal planning strategies and land use bylaws, not all municipalities have these in place.

In respect to agricultural land, some municipalities provide for it in their municipal planning strategies and some do not. We were advised that in the rural municipalities, the more common type of agricultural land use policy protects other uses, especially residential development, from the potential adverse affects of agriculture. The less common type of policy protects agriculture from other uses, especially residential development. The protection of farmland from encroachment is usually achieved by large-lot zoning, by prohibiting non-agricultural development, or by limiting the subdivision of land to lots located on public roads or to a certain number of lots per parcel of land per year.

Only the Municipality of Kings, which embarked on an extensive land use planning strategy in the 1970's, has an extensive land use planning initiative impacting on agriculture, according to the Nova Scotia Department of Agriculture and Marketing.

The Municipal Planning Strategy for the Municipality of the County of Kings is an impressive presentation, encompassing text, policy statements, maps and bylaws, all of which are contained in a two-volume package. Apparently this was preceded by a series of policy papers on population, agricultural, housing, transportation and settlement patterns as well as additional charts, graphs and census data. The plan was approved in 1979 and is amended as more detailed plans are adopted by growth centres.

In respect to recreational lands, under the *Planning Act* both the Province and the municipalities may designate or zone privately-owned property for recreational purposes. The owner of the land shall be compensated by the Province or the municipality involved. The responsible jurisdiction is required to purchase the lands within three years of its designation or zoning. As well, within this three-year period, the owner is paid the equivalent of 10% of the assessed value of the land. To date the Province has not designated any lands under this provision of the *Planning Act*.

In respect to forestry lands, the *Planning Act* makes provision for the Province to protect its interest in the forest resources of the province. To date, no work has been done with respect to this matter. There is no similar provision in the *Planning Act* for municipalities. Nonetheless, some municipalities designate and zone areas as forestry areas, and restrict the range of permitted uses in those areas. Under Section 40B of the *Assessment Act*, forest land of less than 50,000 acres is taxed at a low rate of $0.25/acre. Forest land of greater than 50,000 acres is taxed at a low rate of $0.40/acre. In the event that forest property ceases to be used for forestry purposes, a change in use tax of 20% of the assessed value of the land is payable.

New Brunswick:

At the present time, there are no restrictions on acquisitions of the ownership of land by non-residents of the province, although we understand there have been concerns expressed that the acquisition of recreational properties by nonresidents has inflated values for properties and, in turn, property tax assessments for owners (be they resident or non-resident) have risen.

Nor is there any legislation in New Brunswick which limits or prohibits the quantity of land that may be owned by individuals or corporations.

There are some legislative provisions aimed at keeping land available for agricultural uses. The *Keswick Islands Act*, R.S.N.B. 1969, c. 12 prohibits non-agricultural land use on the islands in the St. John River which are designated in the Act. This measure is applicable only to a small portion of the farmland in the province. Elsewhere, the measures to accomplish this goal are a byproduct of property taxation rules.

Under the provisions of the *Real Property Tax Act*, S.N.B. 1979, cap. R-2 and Regulation 84-75, agricultural land is assessed at its value-in-use as farmland with no reflection of alternative or development use. Under the Farm Land Identification Program, the owner of land which is capable of agricultural production and which is more than a specified size (normally 5 hectares or 12 acres) may register the property in the Program. This provides a property tax deferral on both land and certain buildings so long as the land is kept clear and available for agricultural use for a period of 10 years, after which the taxes are forgiven. If the land use is changed during the decade of deferral, all deferred taxes are payable and a penalty is imposed based on accrued interest from the tax amounts. The Program provides for a deferral only in respect to provincial real property tax and not in relation to municipal property taxes.

Quebec:

The Province of Quebec has been active in promoting legislation to preserve agricultural land and in prohibiting nonresidents from owning agricultural land. Three legislative provisions are involved in this. While some of these measures are under "review" (and perhaps have now been altered somewhat) we are describing the essentials of these programs as we understand them to be.

An Act to *Preserve Agricultural Land*, R.S.Q., 1985 Cap. P-41.1 emanates from legislation that first came into being more than a decade ago. The purpose of the legislation is "intended to ensure protection of farmland and farming activities and the maintenance and development of agricultural potential". Under the legislation, the Government may identify designated agricultural regions. The government calls a designated agricultural region any part of the territory where soil and environment must be protected for agricultural purposes. Six decrees designating such regions are in effect; they involve 1564 Quebec municipalities. Each of these municipalities had to reach an agreement with the Commission [La Commission de protection du territoire agricole du Quebec, which is described below] on an agricultural zone plan for its territory. The regional county municipalities, of which they form part, then review the perimeters of these zones with the Commission. The Union des producteurs agricoles, a Quebec farm organization, is informed of the stages under discussion and issues opinions on the relevant sectors.

La Commission de protection du territorire agricole, one of the organizations entrusted with enforcing this Act, is a tribunal of first instance; its function is to secure the preservation of agricultural land in Quebec and to see that the provisions of the Act are respected. For that purpose, its members decide on applications submitted for inclusion or exclusion of lots in or from an agricultural zone, for subdivision or alienation of land, or for use of land for purposes other than agriculture, and for the cutting of maple trees in sugar bushes. The Commission also issues or refuses permits for topsoil removal. The Commissioners, working with the regional county municipalities, define which part of the territory will be designated an agricultural zone by government decree. There is also an Appeal Tribunal, a body which deals with all appeals from decisions or ordinances of the Commission submitted by interested parties. In addition, there is a Commissioner for Complaints. This officer receives complaints from farm producers who believe they have been wronged in the exercise of their functions by a municipal bylaw. The Act gives him power to make recommendations. Any producer who believes that he has been wronged or that he is likely to be wronged by the application of a municipal planning bylaw or a municipal bylaw respecting nuisance affecting his farming activities in an agricultural zone may file a complaint, in writing, with the Commissioner for Complaints.

The Commission must identify as an exclusive sector, on the agricultural zone plan, any part of that zone which has high soil capability (class 1, 2 or 3) and organic soils which enjoy a climate of 2500 corn-heat units or more, as identified on the maps of soil capability for agriculture, prepared within the scope of the Canada Land Inventory. The resulting proposal is submitted for consultation to the municipality, the Regional County Municipality and the Confederation de l'union des producteurs agricoles, with a view to reaching an agreement. The government then approves the proposal by decree, with or without amendments.

In an exclusive sector, the Commission cannot authorize the use of a lot for purposes other than agriculture, the subdivision or alienation of a lot or the cutting of maple trees, or issue a permit for the removal of topsoil, *unless it is proven to the Commission that there is no appropriate area available elsewhere in the territory of the municipality for the purposes contemplated by the application and that the application is compatible with agriculture and will have no effect on the preservation of agricultural land.* In such a sector, the Commission cannot grant any authorization for public utility purposes to an agency providing public utility services, except upon proof that there is no appropriate area available elsewhere in the territory of the municipality, or that the implementation of such services will not affect the homogeneity of the farm units or involve significant changes in agricultural activities. The Commission cannot authorize the exclusion of a lot which is part of an exclusive sector. As a transitional provision, the Commission must immediately apply these measures to any application affecting a lot most of whose area is made up of class 1, 2 and 3 soils and organic soils, even though the exclusive sectors have not yet been established.

The restrictions contained in the Act apply only to land included in an agricultural zone. Except with the authorization of the Commission, it is forbidden to: (1) use a lot for any purpose other than agriculture (commercial, industrial, institutional or residential uses require Commission approval); (2) subdivide land by filing a plan of part of that land with the Service du cadastre of the ministere de l'Energie et des Ressources and the registry office, or by alienating part of that land while retaining a right of ownership on a portion of land which is contiguous or deemed contiguous (for purposes of the Act, two lots separated by a public road, a railway, a public utility right of way or the surface of land on which there exists a recognized right are deemed contiguous); (3) *alienate a lot* while retaining a right of ownership on a lot which is contiguous or deemed contiguous; (4) *cut maple trees in a sugar bush*, except for the purposes of selection or thinning within the framework of forest management; or (5) *remove topsoil.*

When rendering a decision, the Commission must take into account the general interest in protecting the territory and agricultural activities, and all the facts submitted to its consideration. It must base itself on: the soil potential of the lot and of the neighbouring lots; the possible uses of the lot for agricultural purposes; the consequences of an authorization of the use and the possibilities of agricultural use of neighbouring lots; the restrictions and effects resulting from the application of the Act and regulations, especially those relating to the environment and, more particularly, with respect to livestock operations; the availability of other sites where restrictions on agricultural activities would be eliminated or reduced; the homogeneity of the farming community and its operations; the impact of preservation on water and soil resources in the municipality and in the region; the establishment of land holdings having an area sufficient for farming activities; and the impact on the economic development of the region upon the evidence submitted by a regional county municipality, a municipality, a community, a public agency or one providing public utilities. The Commission may also take into consideration the following criteria: the socio-economic conditions necessary for the viability of a rural community where the low density of occupancy of the territory and the isolation of the community within a region justify it; and/or the consequences of a refusal for the applicant. *The Commission must not take into consideration the fact that the object of the application has been wholly or partly achieved; the possible consequences of the decision on an infraction already committed; or any fact or evidence not related to the criteria on which the Commission must base itself in order to render a decision.*

A person whose principal occupation is farming may, without the authorization of the Commission, build on a lot which he owns and where he carries on his principal occupation, a residence for himself, his child or his employee. An agricultural operations corporation or partnership may also build a residence for a shareholder or member, whose principal occupation is agriculture, on a lot which it owns and where that shareholder or member carries on his principal occupation. It may build, as well, on such a lot, a residence for an employee assigned to the agricultural operations of the corporation or partnership. Any person may alienate an area of no less than one hundred hectares, without the authorization of the Commission, if the contiguous residential area of which he remains the owner is at least one hundred hectares. Any person may build a residence on a vacant lot, without the authorization of the Commission, if the total area of the contiguous lots is also vacant and equal to at least one hundred hectares.

The *Act* mentions various possible sources of acquired rights attached to a lot, and therefore transferable from one owner to another. Thus, any person, without authorization from the Commission, may alienate, subdivide and use for a purpose other than agriculture a lot which, when the *Act* applied to it, (a) was already being used for valid, legal purposes other than agriculture; (b) was under a permit authorizing its use for a purpose other than agriculture (e.g.: a valid building permit or an exploitation permit from the ministere de l'Environnement); (c) was or became adjacent to a public road along which water and sewer services were authorized under a municipal bylaw passed before the Act to preserve agricultural land came into force. With regard to the acquired rights described in paragraphs (a) and (b), if the surface in respect of which acquired rights exist is less than a half-hectare, this surface may be increased to a half-hectare if the lot was being used or was subject to a permit authorizing its use for residential purpose, or to one hectare if its use or the permit was for commercial, industrial or institutional purpose. With regard to the acquired right described in paragraph (c), the surface in respect of which there exists an exemption from the restrictions of the law may be extended on the lot facing the public road, to a maximum depth of 60 metres in the case of residential use and up to 120 metres in the case of commercial, industrial or institutional use. If that part of the surface to which a right of residential use or an acquired right exists under paragraph (a) or (b) is left uncropped for more than one year, that right is thereby extinguished.

Anyone who wishes to do something for which authorization from the Commission is required must apply to the municipal corporation for permission and send a copy of his application to the Commission. The municipality, after a study of the application, advises the Commission of its conformity to its regulations. The municipality must send the application to the Commission within thirty days, failing which the applicant may insist that the Commission itself decides on the application. The applicant and all the interested parties will receive an analysis report. If they so choose, they may ask the Commission to hold a public hearing; otherwise the decision will be rendered solely on the basis of the documents filed in the record. In any case, all parties involved with be notified as to the date of the hearing. Decisions are usually handed down after nine to twelve weeks. Any interested party may appeal a decision or an ordinance of the Commission. Appeals must be filed within 60 days of the date of that decision or ordinance.

The legislation provides for two situations in which a declaration form must be filed with the Commission: when a building permit is issued and when a plan is legally filed. *No municipality may issue a building permit for a lot situated in an agricultural zone unless the application is accompanied by an authorization from the Commission or a declaration by the applicant stating that the project contemplated in the application does not require the authorization of the Commission under certain provisions of the Act* (acquired rights, personal rights etc.). The issuer of the permit must make sure that the declarant has sent a copy of the declaration to the Commission. The applicant may be required to prove that he is respecting the standards of distance indicated in provisions in the *Act*. The plan filed with the Service du cadastre in the ministere de l'Energie et des Ressources to subdivide part of a lot must be accompanied by a certificate of authorization from the Commission, or a declaration that the proposed project does not require authorization from the Commission. The applicant is fully responsible for the facts reported on declarations and the Commission will verify the merits of the parties' claims. The Commission has three months from the date it receives a declaration to advise the declarant, that the construction, or the filing of the plan with respect to it, does not conform to the law. After such a period of time has expired, the actions contemplated in the declaration will be presumed to have been done in conformity with the law. Such a limitation of action does not apply to a fraudulent declaration.

Where the law has been infringed, or one of the Commission's decisions is not respected, the Commission, depending on the case, may issue an ordinance and/or apply to the courts for annulment of the subdivision or alienation effected in contravention of the *Act*, or for a Superior Court order enjoining a person to cease contravening the Act and to have the necessary work done to restore the lot to its former condition. Anyone guilty of an infraction under the *Act* is also liable to penal prosecution.

The *Act* also provides for certain measures relating to farming activities, including immunity against suits for damages and applications for injunctions. A producer whose farming activities in an agricultural zone produces dust, odour or noise, despite the fact that he is respecting the legislation, the regulations and the orders made under the *Environment Quality Act*, cannot incur any responsibility in respect of third parties. A special fund is established at the ministere de l'Agriculture, des Pecheries et de l'Alimentation to ensure the defence of producers against whom an action for damages or injunction proceedings has or have been instituted by reason of inconveniences caused by the carrying out of farming activities exercised while respecting the laws and regulations.

In agricultural zones, every person who wishes to erect a building other than a farm building on his lot must, in respect of neighbouring farming operations, comply with distance standards imposed on such farming operations pursuant to any Act, regulation or bylaw in force at the time of the construction. The municipality cannot issue a building permit where this standard is not complied with by the owner of the lot contemplated in the application, unless that owner has filed, for registration purposes, in the office of the registration division concerned, a declaration whereby he waives, in respect of each neighbouring farming operation subject to the said standard, the recourse that would have been available to him if he had complied with the standards.

This legislation has been subjected to several court challenges and the Supreme Court of Canada has upheld the tough stance adopted by the Commission in four recent decisions.

The decisions were reported in an article entitled "Zonage agricole: interpretation restrictive des droits acquis" ("Agricultural Zoning: Restrictive Interpretation of Acquired Rights") by Sylvie Roussel, which appeared in the *National* in May, 1989. Our translated version of this article provides the nub of the judicial findings and illustrates the commitment to agricultural lands preservation inherent in the Quebec legislation.

> Under the signature of Judge Beetz, the highest court of the country confirmed the right of the Commission for the Protection of Agricultural Land to prohibit the use for purposes other than agriculture of lots located in an agricultural area, and clarified the disputed issue of the acquired rights of those who owned such parcels of land when the Quebec *Act* regarding the protection of agricultural lands was proclaimed on November 9, 1978.

This Act prohibits . . . using a parcel of land for purposes other than agriculture, parcelling land into lots without the authorization of the Commission in an area designated for agricultural use, or transferring ownership of a lot and at the same time retaining the right of disposal of an adjoining parcel of land.

The *Act* allows, however, for exceptions to these restrictions. Section 101, especially, is there to uphold the rights of those who already used a lot for a purpose other than agriculture or who held a permit to use land for a purpose other than agriculture. . . .

In the *Veilleux* case . . . [t]he appealing parties alleged that they had . . . acquired rights to use their lot for a purpose other than agriculture and especially for the purpose of building a home without the authorization of the Commission. On June 13, 1980, the foundations of a house built in 1945 and torn down in 1976 were found on the lot in question. According to Judge Beetz the purpose of the suit was to determine "whether the stone house foundation covered with a wooden floor without anything growing over it on June 13, 1980 represented a non-conforming use that created an acquired right as understood in sections 101 and following in the *Act*".

. . . The Court acknowledged ... that the lot had been used for residential purposes, but it made it clear that this use was abandoned when the house was torn down in 1976: "the owner of an unused and deserted lot does not have a non-conforming use right to protect..."

In another decision involving a real estate developer (the *Gauthier* case, SCC 19620), the Supreme Court declared that section 101 of the Act limited acquired rights to that portion of the piece of land actually used. Mr. Gauthier bought a piece of land in 1975 with the intention of using it for a residential development. Two years later, the municipal council had approved the subdivision of the land and the plan had received the approval of the Department of Lands and Forests, ... The site was prepared, power lines and telephone lines were installed and a model home was built. Some lots had been sold. The proclamation of the Act created a situation whereby a section of Mr. Gauthier's land was included in an agricultural zone; however this section had not been divided up, no construction permits had been obtained for it and no sales or promises of sales were involved. Mr. Gauthier maintained that his residential development should be considered as a whole and that the Court should take into account the intended use of his land as a whole, which was to build houses on it.

According to the Court, the intended use by a land owner when he has work done on a property certainly has its importance in the application of section 101 of the Act. However, this importance is tied in with the qualification "agricultural or non-agricultural" for the use of the lot. Without a use for the purpose of something other than agriculture, no acquired right can exist by virtue of the Act. And even if such a use effectively and actually existed at the time the *Act* came into effect, the second paragraph of section 101 limits the acquired rights resulting from such a use exclusively to the area of the piece of land which is used in actual fact. The idea of special designation for a lot taken as a whole is foreign to the *Act* and cannot be considered as a basis for acquired rights.

Regarding the second reason given by Mr. Gauthier, that is, the permit to use the land for something other than agriculture, Judge Beetz ruled that according to section 101 of the Act, the owners must meet four criteria: "1) the permit must be issued by a body having public authority; 2) the permit must have been valid when the provisions of the *Act* became applicable to the lot; 3) the permit must mention a specific use for a purpose other than agriculture; 4) the permit must apply to a lot in particular or a specified area." The Court came to the conclusion that a subdivision permit and the submission of a plan of the proposed subdivision do not constitute an authorization to implement the plan.

In a third decision (the *Venne* case SCC No. 19689), the Court dismissed the suit of a citizen who wanted to have his acquired rights over two lots recognized. By virtue of a contract signed by Mr. Venne in 1977 concerning the purchase of the lots by 84 instalments, the property would not be transferred to him until the entire sum was paid, that is to say, five years later.

When the *Act* came into force, Mr. Venne had not finished making his payments and the vendor remained the owner of the lots. Since these were located in a zone designated agricultural, it became necessary, pursuant to the Act, to obtain permission from the Commission to sell and to transfer the titles of owner ship. The Court ratified the interdiction to sell issued by the Commission even though the buyer had started to make payments.

. . . .

The Court also decided that the facts of the case in question did not demonstrate an actual use for a purpose other than agriculture. The Court concluded that the transfer of property rights executed in spite of the approbation of the Commission could be declared invalid.

In a fourth decision (the *Lebel* case SCC No. 19690) the Court approved the class action entered against a developer by some 600 persons who had signed contracts similar to the contract signed by Mr. Venne requesting the annulment of the contracts on the grounds that the transfer of property could not take place.

The proclamation of the *Act* gave rise to several lawsuits where the courts had to rule on the application of the Act and at the same time consider the particular and special interests of residential developers. This conflict has now been settled at least partially by the Supreme Court of Canada when it decided in favour of a restrictive interpretation of the acquired rights protected by the *Act*. *The stand taken by the highest court of the land will seem unjust, especially towards the developers and buyers of lots rezoned agricultural. These people have in fact invested a great deal of money to develop these pieces of land. Nevertheless the Court, in upholding the decision of the Commission, decided that, in spite of the special interests some people had, the decision must favour conservation of agricultural land in the province.* The legislators found it necessary to take special measures to reach their objectives, but at the same time, they took steps to protect certain acquired rights. They put in place a special review mechanism by establishing a specialized administrative tribunal namely the Commission, one of whose duties is to study each derogatory use.

> Even if people find the measures harsh, they remain nonetheless the will of the legislators. In the *Gauthier* case, Judge Beetz concluded by saying "the courts, no less than ordinary citizens, must respect the will of the legislators. It is not within their jurisdiction to relax the harshness of the *Act*. [Emphasis added.]

A second legislative measure, designed to preserve agricultural land for Quebec residents and adopted first in 1979, is *An Act Respecting the Acquisition of Farm Land by Non-Residents*, R.S.Q. 1982, c. A-4.1., and its amendments. The Act obliges every natural person or corporate body not residing in Quebec to obtain authorization from the Commission de protection du territoire agricole du Quebec before acquiring agricultural land of over four hectares (10 acres).

Under this *Act*, farmland is defined as land used for agricultural purposes, having an area of not less than four hectares, consisting of one lot or several contiguous lots or several lots that would be contiguous were they not separated by a public road.

A natural person is recognized as a resident if he has resided in Quebec for at least three hundred and sixty-six days, consecutive or not, during the twenty-four months immediately preceding the date of acquisition of the agricultural land. A corporate body is declared a resident of Quebec if it is a validly constituted corporation, whatever the nature of its constitution or its place of incorporation, and if, in the case of a corporation with capital stock, more than 50% of the shares of its capital stock, having full voting rights, are the property of one or more persons residing in Quebec, and more than half its administrators are natural persons residing in Quebec. In the case of a corporation without capital stock, more than half its members must reside in Quebec and such corporation must not be controlled directly or indirectly by one or more persons not residing in Quebec.

The *Act* governing the acquisition of farmland by nonresidents applies to the whole Quebec territory south of the fiftieth parallel of northern latitude. However, within a designated agricultural region established under the *Act to Preserve Agricultural Land*, the *Act* governing the acquisition of farmland by non-residents affects only farmland included in a reserved area for control purposes or in an agricultural zone. In addition, this Act does not apply to the acquisition of an area of farmland which may be used for a purpose other than agricultural under the *Act to Preserve Agricultural Land*. Outside a designated agricultural region, the provisions of the Act do not apply to the acquisition of an area of farmland used for a purpose other than agricultural. Nor do the restrictions apply to farmland acquired through an industrial fund established under the *Industrial Funds Act* or to an area of farmland contiguous to a public road along which public water and sewer services were authorized by a municipal bylaw passed before the date of the acquisition and approved in conformity with the law. The area thus exempted from the application of the *Act* in these categories *may not exceed half a hectare if the lot is to be used for residential purposes and one hectare when the lot is to be used for commercial, industrial or institutional purposes.*

Only a person residing in Quebec, under the present Act, may acquire farmland without the authorization of the Commission de protection du territoire agricole du Quebec. A person who does not reside in Quebec may not, directly or indirectly, make an acquisition of farmland except with the authorization of the Commission. A person who does not reside in Quebec may not acquire, without the Commission's authorization, shares in a company whose principal asset is farmland if, through that transfer of shares, that company becomes a non-resident artificial person. In addition, a person resident in Quebec may not make an acquisition of farmland in the name or on behalf of a nonresident, except with the authorization of the Commission. A person who does not reside in Quebec and who wishes to acquire farmland must submit an application for authorization to the Commission de protection du territoire agricole du Quebec. The application must be made on a form prepared for this purpose by the Commission and must be accompanied by a declaration under the oath mentioning the reasons for the acquisition of farmland, its projected use and, if need be, the applicant's intention of establishing himself in Quebec. The applicant must also attest that the information contained in the authorization application form is accurate. The Commission, when it receives an application for authorization under this Act, will, taking into consideration the biophysical conditions of the soil and of the environment, determine whether the area contemplated in the application is suitable for the cultivation of the soil or the raising of livestock. If the Commission considers that the land in question is not suitable for the cultivation of soil or the raising of livestock, it will grant its authorization. In the opposite case, it will, in examining the application, take into consideration the possible uses of the land in question for agricultural purposes and the economic consequences thereof, the repercussions that the granting of the application would have on the preservation of agricultural land in the municipality and the region and on the homogeneity of the farming community and farming operations. If the applicant is a *natural person* and declares that he intends to settle in Quebec, the Commission will authorize the acquisition on the condition that he live in Quebec for not less than three hundred and sixty-six days in the twentyfour months following the date of acquisition. If, after that time has expired, the authorized person satisfies the Commission that he is resident in Quebec, he may obtain a certificate from the Commission attesting that the condition (of being a resident) has been fulfilled, and the acquisition is thereby ratified.

The deed of acquisition of any farmland by a person who does not reside in Quebec must bear the following information: the declaration of the acquirer that he is not resident in Quebec; the name of the municipal corporation or unorganized territory in which that farm is situated; the area of the farmland thus acquired; the authorization granted by the Commission or the ground on which it is not required. If the registrar finds that the deed of acquisition of farmland by a non-resident does not contain all the aforementioned information, he must refuse to register the deed of acquisition. Any acquisition of farmland made in contravention of the provisions of this *Act* may be annulled. If the Commission becomes aware that a person is contravening any provision of this *Act*, or the conditions of an order or of an authorization to acquire farmland, it may issue an order enjoining that person to cease the alleged contravention.

The third in this trio of Quebec laws to preserve lands for agricultural use is provided in the *Act Respecting Municipal Taxation*, R.S.Q., c. F-2.1, which authorizes the Minister of Agriculture to reimburse the owner or occupier of a farm, if he is a farm producer within the meaning of the *Farm Producers Act*, a part of the amount of municipal real estate taxes, school real estate taxes (not in excess of the maximum set by the law), and compensations for municipal services. With some exceptions, the owner or occupant of the farm is considered to be eligible as an agricultural producer if the person is engaged in the production of a farm product(s) intended for marketing with an annual value in excess of $3,000. Tax bills must be fully paid before an application for reimbursement can be considered. The proportion that is reimbursed varies: if the land is located within an agricultural zone under the *Act to Preserve Agricultural Land*, there is a 70% reimbursement; outside a designated agricultural region the usual portion available is only 40%. Any property that is in a non-agricultural zone is not eligible for any rebate. Companion legislation compensates municipalities for taxes lost because ceilings are imposed on taxation rates and assessment levels for agricultural land. A new policy with respect to the reimbursement of taxes in relation to fallowed land is now being contemplated.

Ontario:

In the Province of Ontario, there are no restrictions in place regarding the amount of land non-residents may own. However, the *Non-resident Agricultural Land Interests Registration Act* requires non-residents of Canada to register with the Ministry of Agriculture and Food their interests in ten or more hectares of agricultural land in Ontario.

Ontario has a *Land Transfer Tax Act*, R.S.O. 1980, cap. 231 that amounts to 2/5 of 1% of the value of the consideration (normally the gross sale price or, in some situations, the fair market value of the land) for the conveyance where the consideration is $45,000 or less. The rate is 4/5 of 1% upon any remaining value of the consideration. *Where the new owner of the land is a non-resident of Canada (and non-resident is given an extensive definition to include corporate entities) and the land involved in the conveyance is either agricultural lands, woodlands or recreational lands, the rate of the land transfer tax is 20% of the value of the consideration.* We understand this measure was included to discourage foreign ownership.

In addition to these measures, there are three key property tax-related programs which encourage the use and maintenance of Ontario lands as agricultural lands, forest lands and natural conservation lands. These programs were established by individual Orders-in-Council pursuant to the *Ministry of Agriculture and Food Act*, R.S.O. 1980, c. 270; the *Forestry Act*, R.S.O. 1980, c. 175; and the *Conservation Land Act*, S.O. 1988, c. 41, respectively, and they are administered by their respective departments.

In agriculture, the Ontario Farm Tax Rebate Program provides municipal tax rebates to owners of eligible farm properties in the province. Under the program guidelines, 100% of taxes levied on eligible farmland and outbuildings - less any applicable reduction - may be paid as a rebate. No rebate is paid for taxes levied on farm residences and one acre of adjacent land. Changes have been made to the program to eliminate benefits to property owners who do not farm their land and these changes reduce or eliminate benefits to property owners with significant off-farm income. A comprehensive evaluation, conducted in consultation with farmers and farm groups, to determine the program's objectives and future direction produced these changes.

To be eligible, the property must be assessed as a farm for the current taxation year; and the property must be owned by a Canadian citizen or permanent resident of Canada. Where ownership is a partnership or corporation, 51% must be controlled by Canadian citizens or permanent residents of Canada. (A mortgagee lawfully in possession of a property must meet the Canadian citizen or permanent resident of Canada requirement.) In addition, in order to be eligible for the farm tax rebate program the owner must farm all or a large portion of the property. Where the owner is a corporation or business (public or private) the property must be farmed by the corporation or by a shareholder who owns 10% or more of the corporation or business. Properties farmed by the applicant for the rebate must produce total farm products with a gross value in a normal production year of $8,000 in southern and western Ontario or $5,000 in northern and eastern Ontario.

Certain exemptions are allowed for individuals who rent out their farm or do not meet the production level because of age, illness or death of a spouse. To be eligible under these exemptions, the following conditions must be met: the land must still be in some production, and the owner must have been eligible for a rebate in the preceding 10 years.

Even if these conditions are met, owners are still subject to the off-farm income requirements. The amount received on each separately assessed property is 100% of the eligible municipal taxes on farmland and outbuildings, but this rebate will be reduced by 5% for every $1,000 that the property owners' off-farm income exceeds a base amount. The base amount is $40,000 where there is one owner on title and $60,000 where there are two or more owners on title. No rebate is paid when the combined offfarm income reaches $60,000 (in situations where there is one owner on title) or $80,000 otherwise. Off-farm income is the total income earned during the previous taxation year from nonfarming sources. For individual owners, the off-farm income is taken from the T1 General Individual Income Tax return for the preceding year. (Employment income and the taxable amount of dividends from taxable Canadian corporations are not considered off-farm income if the source of the income is a corporation in which the applicant is at least a 10% shareholder.) Rental income is not considered off-farm income if the revenue is earned by renting farming assets to a corporation in which the applicant is at least a 10% shareholder. For a corporation, the off-farm is determined using the Corporation Income Tax return for the preceding year. If the net income includes revenues from both farming and non-farming sources, it may be pro-rated or specifically assigned. Where the property is owned by two or more registered owners or corporations, the combined off-farm income of the owners or corporations must be provided.

For this program, each farm property must be classified under the type of arrangement which the owner has made to operate the property. The categories of operator arrangements are as follows: Owner Operated, where the owner provides the necessary skills, labour, equipment and machinery for agricultural production; Renter Operated, where the owner receives a cash rent for the use of the land; and the Farming Agreement which includes all other farming arrangements, except for owner-operated or renter-operated categories. These arrangements may be of different types such as where the owner allows a farmer the use of the land in exchange for a fixed quantity or fixed percentage of the production; where the owner receives a share of the final production and shares in the cost of the operation in exchange for the use of the property; or where there are sharecropping agreements. If the property owner has a farming agreement, the farmer involved with the agreement must also sign the application form in order for the property owner to claim the rebate. The owner must indicate the farm operator type for each property. If the property has been sold, this is also indicated.

As indicated above, only properties producing above a specified gross production value are eligible for property tax rebates. Gross production value is the total sales value of farm products, plus or minus changes in inventory, minus the cost of purchased feed or livestock, for all farm properties that are being farmed by the applicant. If the applicant is farming properties rented from other landowners, the value produced by these properties can be included in the applicant's gross production value. Production from the properties owned by the applicant and rented to others cannot be included in the gross production value. If the property is operated under a farming agreement, value of its total production is included as part of the gross production value.

If rebates are paid and are subsequently found to be ineligible, they must be repaid. If an owner converts a farm property (or a portion of it) to a non-farm use, and the assessment changes to non-farm while the owner still holds the property, the owner must repay any rebates received on that property (or a portion of it) in the past 10 years, along with 10% interest. When a farm property is sold and the new owner converts the property to a non-farm use, and it is assessed nonfarm, neither the seller nor purchaser is required to repay any rebate previously paid on the property. If property was purchased during the year, the current owner may apply for a rebate. An ownership change must be supported by a copy of a land transfer deed. How a rebate may be divided in this instance is to be decided between the seller and buyer of the property. Unless the rebate was already paid to the assessed owner, a mortgagee-in-possession of farm property may apply for a rebate and provide documents (e.g. power of sale, notice of foreclosure) to establish lawful possession. The mortgagee-in-possession must meet all eligibility requirements to receive a rebate. Rebates received under the program are reported as taxable income on the annual income tax submission.

Farm owners who have had their request for the Farm Tax Rebate denied may appeal to the Farm Tax Rebate Appeal Board. The board consists of farmers from across Ontario. Farm owners, who have had a rebate denied, have two options: they may provide additional written information to the program within 30 days of a notice of rejection to obtain a further review; and/or if the decision of the program remains unchanged, they may submit an appeal to the Farm Tax Appeal Board within 60 days.

The Ontario Managed Forest Tax Rebate Program provides municipal tax rebates to property owners to encourage the proper management of private forests. The rebate equals 100% of the municipal taxes levied on the managed forest assessment, an increase from the 60% rebate of eligible taxes allowed in the opening years of the program. The tax prepayment requirement has been removed, so it is no longer necessary to have prepaid the taxes to qualify for the rebate.

To be eligible for the rebate, the forest portion of the land must meet the definition of a "managed forest". A forest that consists of a minimum of four hectares (10 acres) on one parcel of land or any number of adjacent parcels of land under the same ownership and is subject to an agreement under the Woodlands Improvement Act or the Forestry Act, or subject to a management plan certified by a registered professional forester, is eligible to be considered as a "managed forest". Alternatively, a forest that comprises ten hectares (25 acres) or more on one parcel of land or any number of adjacent parcels of land under the same ownership may be considered to be eligible providing livestock does not pasture or roam in the forest and, providing that if cutting took place in the forest in the preceding year, it was done in accordance with good forestry practices or a municipal tree cutting bylaw (if one exists) passed under section 4 of the *Trees Act*. In addition to meeting these criteria, to be eligible for the rebate it is necessary that the forest contains one or more of a specified kind of tree. It is also necessary that the forest includes a minimum number of trees per hectare, with actual numbers varying in accordance with the size of the trees or 400 trees per acre of any size.

Tax rebates are available under this program only to property owners who are Canadian citizens or permanent residents of Canada; where partnerships or corporations own forest property, only those which are controlled by Canadian citizens or permanent residents of Canada are eligible for the rebate. All applicants must certify on the application that the forest portion of the land meets the definition of managed forest.

While the amount received on each separately assessed eligible property is 100% of eligible property taxes, no rebate of less than $100 total is paid and no rebate is paid in respect of the managed forest if it is included as part of the same assessed parcel or portion of land that has or will be paid a rebate under the Farm Tax Rebate Program.

If the property is sold or purchased during the year, either the purchaser or the seller may make application for the total rebate, but payment of the rebate is expected to be apportioned between the parties in the same ratio as the property taxes were apportioned.

Every rebate under this program is paid subject to the condition that if the managed forest ceases to be a managed forest within 10 years, the person who owns the managed forest or part of it at the time that it ceases to be a managed forest, must repay an amount of money equal to the total rebate which that person received from the property (or portion of the property) that ceases to be a managed forest, together with interest on that amount at the rate of 10% per annum, calculated yearly, from the date the rebate was paid to the date such amount is repaid to the Minister.

The Ontario Conservation Land Tax Reduction Program encourages and supports the long-term stewardship of special classes of conservation land by providing up to a 100% rebate of property taxes to those landowners who agree to protect the natural heritage values of their property. To participate, owners of eligible lands must complete an application form and submit it to the Ministry of Municipal Affairs.

Conservation land includes land classed as a significant wetland (Class 1, 2 or 3); provincially significant Areas of Natural and Scientific Interest (ANSI); areas designated as Escarpment Natural Area in the Niagara Escarpment Plan; nonrevenue producing Conservation Authority land; and other conservation lands owned by non-profit organizations that, through their management, contribute to provincial conservation and natural heritage objectives and that do not fit specifically into one of the above categories.

The conservation land must be considered highly significant in order to qualify for the tax rebate. Not every wetland or Area of Natural and Scientific Interest, for example, is eligible for the rebate.

There is an appeal process for those landowners who believe that their land has been incorrectly excluded from the program or that more of their land qualifies.

To be eligible for a rebate, conservation land must be at least 0.2 hectares (one-half acre) in area. The minimum rebate payable is $20, even if the actual taxes paid are less than that amount. The maximum rebate is $25,000 for a single property owner, excluding conservation authorities.

Conservation landowners must agree to manage the land as conservation land and not carry out any activities that would have a negative impact on the natural heritage values of the land. The owner of conservation land must agree to long-term maintenance of the conservation land in its natural state. Landowners who cease to maintain conservation land in its natural state must repay an amount equal to the total rebates received by all owners during the previous 10 years plus interest at a rate of 10% a year, calculated annually.

In addition to these programs, the *Assessment Act*, R.S.O. 1980, cap. 31 ensures that farmlands are assessed for municipal taxation based on land productivity values rather than speculative factors.

The *Planning Act*, R.S.O. 1983, c. 1 sets out the legislative framework for land use planning in Ontario. This is the basis for provincial interests in land use planning relative to municipal land use planning, local responsibilities in administering the planning process, the regulation and control of land use, the division of land into lots for sale or development, and the opportunity for residents to participate in the planning process.

This legislation enables the province to express its interests in land use planning through the use of policy statements issued by the Minister of Municipal Affairs. These policy statements are intended to provide direction and guidance to provincial ministries, public agencies, municipalities and others in carrying out the land use planning mandate. Once a policy statement has been issued, the legislation requires that agencies "have regard to" it in carrying out land use activities. For example, a municipality is obligated to consider the application of a specific policy statement and, in general, to follow its provisions unless it can be demonstrated why the policy statement is not applicable.

One policy statement is the "Food Land Guidelines: A Policy Statement of the Government of Ontario on Planning for Agriculture" issued in 1978 but not yet incorporated as a policy statement under the *Planning Act*. The purpose of this policy is to protect a land area, which will be available on a long-term basis for agriculture and within which agricultural activity can occur with a minimum of disruption from competing or non-compatible land uses. This policy on agricultural land use planning, administered through the Department of Agriculture and Food, is used to review development proposals and planning documents such as official plans, zoning bylaws, plans of subdivision and consents to sever. We understand these Guidelines are now under review with the intention of issuing them as a policy statement under the *Planning Act*.

At the present time, Ontario does not have any policy statement issued under the *Planning Act* for either forestry or recreational use.

There is legislation (the *Topsoil Preservation Act*, R.S.O. 1980, c. 504) which enables a municipality to pass a bylaw regulating the removal of topsoil.

Ontario has recently adopted "right to farm" legislation. The *Farm Protection Act*, S.O. 1988, c. 62, provides immunity from nuisance actions under the common law where normal farm practices are at issue. Under the provisions of the legislation, a person aggrieved by any odour, noise or dust resulting from any agricultural operation may apply to the Farm Practices Protection Board, a tribunal created by the Act, for a determination as to whether the odour, noise or dust results from a normal farm practice. The Board, composed of at least five members appointed by the Minister of Agriculture and Food, can make inquiries and resolve disputes on request and can issue whatever orders it finds are necessary to comply with its decisions. Appeals from its decisions may be made to the courts, but until the Board adjudicates on the farm practice, injunction proceedings are in abeyance and there can be no liability in damages. There must be compliance with the *Environmental Protection Act*, the *Pesticides Act*, the *Ontario Water Resources Act*, the *Health Protection and Promotion Act*, 1983 and any land use control law in order to have the protection from nuisance claims that this legislation may provide.

The "right to farm" legislation was enacted after the Ontario Right to Farm Advisory Committee Report was issued in 1986. This report considered a number of land use issues pertinent to the agricultural sector. Data in this report, together with information from a number of other sources, indicate that land use planning objectives are not being met, particularly in relation to the agricultural sector. For example, in spite of the "Food Land Guidelines" of 1978, the Ontario Right to Farm Advisory Committee Report stated (at p. 5):

> Assuming it takes 1 acre of land to feed one person in Ontario and with a population of 9,000,000 we have only just enough prime agricultural land to be self-sufficient under the present methods of production. *The loss of 18,000 acres around Metro Toronto in the five years from 1976 to 1981, most of it Class 1 land, would indicate that we are approaching a crisis in self-sufficiency if farm land continues to be lost at the same rate.* Of the land in Canada only 0.5% is Class 1 and 50% of this Class 1 land is in Ontario. [Emphasis added.]

One portion of the Province of Ontario where land use planning and controls have been implemented extensively is the Niagara Escarpment. This area encompasses a stretch of land some 450 miles in length from Niagara to Tobermory.

The Niagara Escarpment Commission, established in 1973 under the *Niagara Escarpment Planning and Development Act*, is a 17-member agency appointed by Order-in-Council and reporting to the Government of Ontario through the Minister of Municipal Affairs. Nine of the members of the Commission represent the public-at-large; the remainder are representatives of the counties and regions within the Escarpment area.

The purpose of the legislation and the Commission is to provide for the substantial maintenance of the Niagara Escarpment and land in its vicinity as a continuous natural environment and to ensure only such development occurs as is compatible with that natural environment. Initially, the Commission was give the task of preparing a Provincial Plan for the Niagara Escarpment and to administer a system of development control. The Commission prepared a draft preliminary proposal, released in 1978, followed by a proposed plan. Each municipality within the Escarpment had a statutory review period for commenting on these documents. Three hearing officers, appointed by the Commission, then held some 26 months of hearings that were attended by some 9,300 people and that involved 743 submissions. The hearing officers then submitted a four-volume report in 1983 and the Commission made its recommendations later that year. Both the recommendations from the hearings and those from the Commission were submitted to the province which, in turn, produced a set of recommended policies for resources development in the Escarpment. More than 350 written submissions were received on these recommended policies. The Niagara Escarpment Plan was given Cabinet approval in 1985.

With the approval of the Plan, the mandate for the Niagara Escarpment Commission has changed to that of an implementing agency for the Plan. Its main functions include promoting the objectives of the Plan, promoting and making decisions on development permit applications, reviewing and commenting on all proposed developments within the Plan area and intervening at hearings if Plan policies are substantially threatened; processing and making recommendations on proposed Plan amendments; assisting the Minister of Municipal Affairs and municipalities in achieving conformity of local official plan documents and municipal bylaws; assisting the Minister in monitoring Plan implementation; and providing a Plan interpretation role.

The Plan sets out policies, together with a special system of land use regulation and Plan administration. Together, these are designed to ensure wise land use management and conservation of the Niagara Escarpment.

There are several parts to the land use regulation and Plan administration system. The Plan contains policies, objectives and maps for each of the regions of counties within the Plan area. Policies on land use, permitted uses, lot creation and development criteria predominate. In addition, policies are provided to establish and complete a Niagara Escarpment Park System. A land use and development control system based initially on The *Niagara Escarpment Planning and Development Act* but ultimately conforming with *The Planning Act*, is designed to ensure that Plan policies are incorporated into municipal planning actions. The Niagara Escarpment Parks System comprising the parks and open space areas of several public authorities and linked, wherever possible, by the Bruce Trail is part of the Plan. To ensure completion of the Parks System, a Niagara Escarpment Fund, administered by the Ontario Heritage Foundation, has been established. A ten-year Government funding program, augmented by a system of accepting donations of Escarpment land and heightening public awareness of Escarpment values, is another feature. A monitoring system for the Niagara Escarpment Plan involving provincial agencies, municipalities and the Niagara Escarpment Commission is established to ensure Plan policies are incorporated into official plans and implemented.

The Niagara Escarpment Plan has provided seven land-use designations: Escarpment natural area; Escarpment protection area; Escarpment rural area; minor urban centre; urban area; Escarpment recreation area; and mineral resource extraction area. Within each designation, the Plan provides a list of objectives, the criteria for designation, the permitted uses within the particular designation and restrictions for the creation of new lots.

The subdivision of land is not prohibited, but is severely curtailed, within a number of these designations. For example, in several of the designations, the rules permit a farmer who has been farming a substantial number of years and who is retiring from active life to sever one lot from the farm holding on which to build a house for retirement. Additional severances may be made under various criteria, depending on the designation. For example, in those areas designated as "Escarpment rural", the basic formula is to allow two new lots per 100 acres where no lots have ever been severed in the past and where the lots to be created are not in conflict with the Foodland Guidelines.

The Niagara Escarpment Commission has design controls in place and employs a landscape architect to offer advice in this regard. For example, if the applicant proposes to build a house that is too large for its surroundings or for the scale of the area, the permit will be denied unless the design is modified. A recent trend towards building "monster houses" in the Escarpment has been noted; a proposal to build a house of some 40,000 square feet (nearly one acre) in floor space was denied; its size was far in excess of other homes in the vicinity.

The Niagara Escarpment Commission annually presents Development Achievement Awards under a program that provides three awards each year in each of the regions and counties in the Escarpment area. Any landowner in the area is eligible for an award based on completed work on his or her property. Designed to encourage high standards for new development projects, the awards are made for results that are exceptional in their compatibility with the Escarpment's environment and landscape.

While the restrictions imposed by the Plan were subject to considerable public dispute at the outset, the benefits of the planning process are now being realized by many as the Escarpment area is compared, favourably, with other parts of the province. Escarpment properties have been highly prized because the controls provide considerable stability for property owners, anxious to ensure their surroundings are, if not preserved, at least not subjected to incompatible and/or unwelcome uses. This is not to say that the Niagara Escarpment land planning scheme has not been without controversy. Pressures both from landowners who wish to capitalize on the additional revenues they could receive from more extensive subdividing of Escarpment properties and from a large populace outside the Escarpment anxious to acquire rural residential or recreational properties have led one Toronto columnist to dub the Niagara Escarpment as a "war zone". (Michael Valpy, "Niagara Escarpment as a War Zone". Globe and Mail, August 20, 1989). Elsewhere in Ontario, particularly outside urban municipalities, the slow pace of planning for future land use, especially in the protection of prime agricultural land, has led to extensive criticism and concern levelled at the inactivity in the political sector.

Manitoba:

The Provincial Land Use Committee of the Manitoba Cabinet adopted Provincial Land Use Policies applicable to all land in Manitoba with the exception of the City of Winnipeg. These policies, adopted in 1980, were compiled in a convenient publication of approximately 30 pages. Each of the 13 policy statements is accompanied by an explanation of policy objectives, policy applications, definitions for purposes of the policy and, on occasion, some unique provisions (such as "siting criteria", "public shoreline reserve" etc.)

It is both useful and interesting to make two references to this publication, entitled "Manitoba Provincial Land Use Policies". The first reference is in relation to the opening section, "General Scope and Application", which, at p. 3, states as follows:

> The Policies will serve as a guide in the approval of Basic Planning Statements and Development Plans. Also, in municipalities where there are no such plans approved for the area, the Policies will be used in the review of subdivision applications. The Policies are intended to provide the overall framework necessary for the preparation and assessment of local plans, by setting out some general guidance and direction in the management of the Province's land resource.
>
> By their very nature, the Policies must be fairly broad since they must serve to guide a wide range of uses in many differing areas throughout Manitoba. They do not take into account unique local situations and, therefore, must be applied with some amount of discretion and common sense, where it can be shown that the intent of the Policies can still be achieved, or where they are not appropriate.
>
> Many of the policies contain detailed criteria and specifications with respect to their application. While these units of measurement are definitive in and of themselves, it is not intended that they be interpreted as mandatory regulations or rigid formulas, but rather that they may be varied in unique situations so as to ensure that policy application can be as responsive as possible to local conditions.
>
> These Policies have been designed to further the overall intent of The Planning Act as a process of local planning and decision making guided by provincial policy. Local circumstances can best be understood and interpreted through the preparation of more detailed plans for a given area since municipalities often have unique characteristics which demand a different approach. Through the process of planning at the local or district level, the Policies can be refined and adapted to suit the particular needs of the area. Once planning documents have been prepared by the local authority and approved by the Province, the local plans will replace this more general provincial policy document as the instrument guiding development in the area.

In other words, the Policies provided general guidance but also allowed a degree of flexibility to accommodate local circumstances.

The second reference to "Manitoba Provincial Land Use Policies " is to identify the thirteen policies that were adopted. These were as follows:

> **Policy # 1:** Areas should be preserved for a full range of agricultural activities where agriculture is in the dominant position on prime agricultural land and where agricultural activities are dominant on lower class lands and it is desirable to protect such activities.
>
> **Policy # 2:** Areas should be preserved for limited agricultural use, where because of the mixture of the land uses a full range of agriculture activities may no longer be possible.
>
> **Policy # 3:** Lands may be designated for rural residential development provided that the siting and design of such development reflects its role as an alternative to the urban lifestyle and not as an evolutionary step towards an urban environment. In addition, the development shall be planned to minimize conflict with resource-related industries and activities and to minimize public sector costs.

Policy # 4: Proposed urban land uses shall strengthen existing urban centres rather than establish new competing centres. Growth of existing centres: a) shall be planned in such a manner that water and sewer services can be made available at an economically feasible cost; b) shall, if the centre if bordering on one side of a major highway, be restricted to the same side of that highway, wherever feasible; [and] c) may necessitate urban expansion onto adjoining lands. In these instances the land requirements of the urban centre shall normally have priority over the existing use of that land.

Policy # 5: Development plans shall identify areas of high recreation capability and existing recreation developments of regional and provincial significance.

Policy # 6: Recreational developments shall be permitted only to the carrying capacity of the resource being utilized. Such developments should be planned in harmony with the natural environment. Public access to and use of key resource areas shall be preserved.

Policy # 7: Waterways, water bodies and shorelands having environmental, recreational or other general significance to the public should be afforded protection.

Policy # 8: Recreation and resource areas shall be afforded protection from adjacent uses that would degrade or endanger their primary function.

Policy # 9: Areas critical to the existence of rare or endangered plants or animals, significant natural features, and cultural and historic sites of the region shall be identified and should be designated and preserved.

Policy # 10: Areas shall be identified, designated and reserved for renewable resource production, utilization and preservation by outlining: (a) areas of existing prime wildlife habitat; (b) existing exceptional forestry value areas; (c) areas of existing prime fish habitats; [and] (d) other areas of renewable resource significance.

Policy # 11: Lands subject to hazards such as flooding or erosion should be retained for open space or agricultural cropping. More intensive development shall only be considered where the hazard can be eliminated or where the use would be compatible with the risk.

Policy # 12: New development should be restricted in the vicinity of provincial highways so as to avoid any interference with the main function of this regional transportation network. [An accompanying map identifies which roads are "provincial highways".]

Policy # 13: Economically valuable aggregate and quarry mineral deposits should be protected from surface land uses that would interfere with their ongoing and future exploitation.

Accompanying this document on "Provincial Land Use Policies" is an equally commendable publication, a small brochure entitled "Planning In Manitoba: Making Choices for Change". This is very much the layman's guide to the planning process. Using easily understood language, cartoons and simple examples, the publication outlines the planning process. Although the brochure contains seven headings that deploy appropriate jargon ("planning framework", "district planning", "development plan", "zoning land", "subdividing land", "planning services"), the text is very straightforward. Readers learn the Development Plan has two parts:

> "POLICIES: what you want, and
> PROGRAMS: how to get what you want"

The opening section of the brochure ("Why Plan?") begins with a cartoon of two ordinary-looking fellows, one of whom asks "Why do we need to plan?" and the other who says, "Nothing ever happens around here.". The accompanying text provides not just a good answer to the question "Why Plan?", it also illustrates the type of style and language that serves to put across the basic message.

> You may think nothing ever happens. But take another look. Things have changed. There may be major changes - a new housing development may have sprung up on the south side of town with a new school, park and recreation centre. There may be minor changes - a grove of trees may have been cut down to make way for a signboard. Change big and small has taken place. Change will always take place.
>
> Your part of Manitoba doesn't look the same as it did when your parents or grandparents settled there. It probably doesn't look the same as it did when you were a child. Have you ever stopped to think about what your part of Manitoba will look like when your children or the kids down the road are grown up?
>
> Change may take place that you think is good for your community. You may have a main street upgrading program going which is putting a new face on downtown. Your new industrial park may be attracting new business - and creating new jobs. Farmers may be getting together to plan drainage and erosion control programs so that the precious soil and water in your area will be conserved.
>
> On the other hand, change may take place that you do not think is good for your community at all.
>
> If you live in the country, you may find that the farmer next door has sold off some of his good agricultural land to people from town who want a rural life-style. If this happens often enough, you may find that your property assessment has been affected. But that's not all that will be affected. Taking good land out of production affects not only the amount of dollars and cents spent locally, but provincial and national economies as well. Town people looking for country living can find a place in your part of Manitoba. Why not encourage development on land that is less productive and in areas where the important business of farming will not be interfered with?
>
> If you live in a city, town or village, you may find that a food processing plant has been built next door to a church, or a wreckers yard across the street from the elementary school, or bulk storage tanks for anhydrous ammonia downtown on Main Street.

> There may be special problems which have sprung up along the boundary between town and country. For instance, your neighbouring municipality may have decided to allow a shopping centre to develop just outside town boundaries. This will no doubt affect downtown business people! Or perhaps the rural municipality has built a nice housing development just outside town boundaries - only to have it annexed by the town - which takes over property tax revenues!
>
> Change, good and bad, affects and will continue to affect the environment, the social and community life in your part of Manitoba, the way you make your living.
>
> *You can plan for change. Planning can mean that change will be orderly, affordable, and designed for today - and tomorrow.*
>
> The government of Manitoba believes that land use planning for change begins at home. You are the people who know your hometown and countryside. The province has set down certain ground rules to follow to make sure planning practices meet a certain standard province-wide. Within these rules, planning is flexible and meant to be adapted to local conditions.
>
> Within this framework of rules, the choice for change is yours. [Emphasis original.]

While "Planning in Manitoba: Making Choices for Change" is obviously the publication keyed for general public understanding, the series includes others for more specialized interests. Titles such as "Public Involvement and Information", "The Development Plan", "The Zoning Bylaw", "Subdividing Land" and "Planning Administration" are aimed at audiences with particular concerns or roles in the planning process. For example, "Subdividing Land" is a 12-page booklet "written for municipal councillors and planning district board members to assist them in making informed decisions regarding subdividing of land".

The planning process is not without its legislative components. The *Planning Act*, R.S.M. 1987, c. P80 is an extensive piece of legislation. But, unlike many jurisdictions, the province of Manitoba, it would seem, has taken steps to put in place a province-wide planning regime with ample supporting materials to convey the planning message to the public and those involved with decision-making at the local level.

In addition to an ambitious planning program, the Province of Manitoba has legislation aimed at restricting speculation in farmland. The *Manitoba Farmlands Ownership Act*, enacted in 1983 and proclaimed in 1984, arose because of large purchases of Manitoba land in the preceding decade by foreign and non-resident Canadians. The legislation is said to support three major goals: to increase opportunities for residents, including farmers, to acquire farmland in Manitoba; to strengthen the family farm; and to support the development of strong rural communities. The *Act prohibits non-residents of Manitoba and non-farm corporations from acquiring more than 10 acres of farmland in Manitoba.* The legislation is not retroactive: individuals or corporations that acquired land prior to the date of proclamation of the Act may retain their holdings. The *Farm Lands Ownership Act allows all residents of the province, whether they farm or not, to purchase an unrestricted amount of farmland in Manitoba.* Residents may acquire land as individuals or in partnership with other residents of the province.

According to the Act and the regulation pursuant to it, a farmer is defined as a Manitoba resident who derives 50% or more of his gross income from farming, and spends at least 40% of his working time actively engaged in farming. For the purpose of definition of "farmer" in *The Farm Lands Ownership Act*, the term "actively engaged" is defined to mean participation by an individual in (a) the supervision and management of the farming operation and (b) the application of physical labour to the farming operation, unless the individual is precluded from doing so due to age or physical disability. (A retired farmer, under the Act, is an individual who has farmed for 10 years or more in Manitoba and has retired from farming.) The Act allows transfers of land to non-residents of Manitoba only under the following conditions: (1) A Manitoba resident, and a retired farmer or his spouse regardless of where they now reside, may bequeath land to anyone anywhere in the world; (2) A retired farmer or his spouse, or an active farmer, who has farmed for at least 10 years in Manitoba, or his spouse, may transfer land to their relatives regardless of where the relatives reside; (relatives to whom land may be transferred, include the spouse, child, grandchild, brother, sister, nephew or niece of the person transferring the land.); or (3) A retired farmer or his spouse may retain ownership of land even if they take up residence outside of Manitoba.

Manitoba's family farm corporations may purchase an unrestricted amount of farmland in the province provided that: the corporation is primarily engaged in farming; Manitoba farmers, their spouses or their resident children own at least two-thirds of all classes of shares in the corporation; and the corporation is controlled in fact by Manitoba farmers, their spouses or their resident children. Family farm corporations may obtain up to one-third of their equity from non-farm sources and still qualify for unrestricted ownership of farmland. Shareholders in a family farm corporation may will shares in the corporation to anyone, including those who may not farm or may not reside in Manitoba. The corporation, in turn, would be able to retain ownership of its land holdings.

The Farm Lands Ownership Board has been created to administer and enforce the provisions of the Act. The Board has a chairman, a vice-chairman and 3 members. It is administered by an executive director, a solicitor, an investigations officer, an administrative assistant and a clerk. The Board has the authority to exempt individuals, corporations, farmland or interests in farmland from any provision of the legislation. Those seeking an exemption from the provisions of the Act must submit an application to the Board. In conducting its hearings and other proceedings, the Board is governed by formal rules of procedure, which define the Board's role and responsibility with respect to such matters as investigations, hearings and issuance of exemption and divestiture orders. All orders issued by the Board, other than those relating to exemptions, may be appealed to the Court of Queen's Bench.

Under the *Real Property Act* and the *Registry Act*, transfers of land over 5 acres tendered for registration must be accompanied by a statutory declaration stating information pertinent to the transaction. These declarations are then forwarded to the Farm Lands Ownership Board. As an indication of the Board's workload, its office received and processed 6,426 statutory declarations in the 1988-89 year.

The Farm Lands Ownership Regulation (Regulation 204/87) provides "guidelines" for the Board in granting exemptions to this extent:

> Where an application is made to the board for an exemption from any provision of The Farm Lands Ownership Act, the board may give favourable consideration to applicants or to acquisitions of land that meet the following guidelines:
>
> (a) the applicant is a non-resident but intends to take up residence in Manitoba within a reasonable period of time;
>
> (b) the applicant is a resident who plans to leave the province temporarily and to return within a reasonable period of time;
>
> (c) the applicant is a religious, charitable or non-profit organization;
>
> (d) the applicant is a non-resident who resides and farms within 10 miles of the Manitoba border;
>
> (e) the acquisition of farmland by the applicant is likely to confer a significant benefit on the province;
>
> (f) the acquisition of farmland by the applicant is in the public interest.

According to the 1988-89 Annual Report for the Farm Lands Ownership Board, 145 applications for exemption were considered and 142 of these were approved. However, the Annual Report "noted that the Board receives a large number of inquiries each year from would-be applicants for exemptions under the Act. The low percentage of denials (5%)...is due mainly to the fact that many non-residents decide against applying for an exemption after learning more about the legislation from board staff."

Saskatchewan:

Among the materials we received from the Province of Saskatchewan was a report entitled "Strategy for the Development of Rural Saskatchewan: Report of the Task Force on Rural Development", completed in May of 1985. Although the mandate of the Task Force was, as its name implies, "Rural Development", the breadth of its assignment and its approach had considerable similarity to our assignment. In the Foreword, the chairman described the report in this fashion:

> This should not be construed as a proposed policy or program document of the Government of Saskatchewan. Rather, it is an idea report which the Premier and his colleagues, and the people in Saskatchewan in general, can use as a basis for considering new initiatives and undertakings.

The contents included information on the province, information provided at both public and private hearings, information from other jurisdictions, and recommendations, some general in content and others more specific. Despite the focus on "rural development", many of the subjects overlapped to some extent the concerns we faced vis-a-vis land ownership, land use and the landscape. In part, this is undoubtedly a reflection on the topics themselves. But, in addition, the commonality may have some derivation in the fact that Prince Edward Island and Saskatchewan are both provinces where agriculture is the leading economic sector. Indeed, they are the sole remaining jurisdictions in Canada able to make this claim.

Even though the land base in Saskatchewan is vast by comparison with that of Prince Edward Island, the Task Force noted concerns relative to land ownership in relation to the agricultural sector of particular interest to this province. Excerpts from the Task Force report, at pp. 197 - 201, raise these issues:

> **Land Transfer**
>
> *High land costs, large units and absentee ownership all tend to increase the amount of land rented by farmers.* . . . the average land and building value per acre doubled from 1971 to 1976, and more than doubled from 1976 to 1984. . . . most rural residents are aware that the farm units in their community are the largest they have ever been.
>
> Absentee landlords in Saskatchewan include retired farmers, individuals employed in other occupations, or agricultural corporations where the principals are directly involved in agriculture. *By legislation, ownership of farmland by non-agricultural corporations and "nonresidents" of the province is restricted. Saskatchewan's aging population, farmer retirements, and opportunity in land investment as an inflationary hedge have all encouraged substantial increases in absentee ownership in the last two or three decades.*
>
> The Saskatchewan Farm Ownership Act restricts the ownership of farmland by non-agricultural corporations and nonresidents of the province. Section 11(1) of the Act provides that, subject to sections 12 and 13, *no non-agricultural corporation shall have or acquire an aggregate land holding in excess of 10 acres.* The Task Force concluded that *this provision inhibited some types of rural development and therefore should be changed, especially for resident-owned corporations.* The main problems caused by the 10-acre limit include the following:
>
> > - economic development opportunities that require the corporate approach for obtaining adequate capital and limiting liability are discouraged or prevented,
> >
> > - corporate capital is restricted in assisting in farmland transfers,
> >
> > - a 10-acre land base is insufficient for many types of development (such as machinery dealerships, agricultural chemical companies and livestock/abattoir enterprises),
> >
> > - several hundred (about 325) non-agricultural corporations have up to 160 acres of land and will be required (Section 12) to dispose of land in excess of 10 acres by January 1, 1994 unless the Act is changed or exemptions are granted. This is a major concern to corporations which require the land they have to continue their activities, and
> >
> > - the provision is viewed as too restrictive and excessively regulated by residents of Saskatchewan who need more than 10 acres for some types of development activities.
>
> Considering the many types of intensive development opportunities which would relate positively to rural development, the *Task Force concluded that a new section should be added to The Saskatchewan Farm Ownership Act to allow non-agricultural corporations which are wholly owned by Saskatchewan residents to acquire an*

aggregate land holding not exceeding 160 acres or one quarter section, whichever is greater. This should not adversely affect the basic intent of the Act and would overcome the problems outlined above. More important for rural development would be the base this would provide for more economic development and activity. An incidental benefit for the Farm Ownership Board would be a reduced workload as a result of the decrease in exemption requests from potential developers who need more than 10 acres for their projects.

The percentage of operators that rent a portion of the land they farm has increased steadily in all three prairie provinces, . . . This trend indicates that renting is being used as a means of achieving increased farm size without the financial burden of purchasing all the land being farmed. . . .

Problems

Increases in land values have been significantly higher than the rate of inflation in most years since 1971. Land purchases have in some cases been used as both a hedge against inflation and as an investment. Many such purchases have led to increases in farm size. . . . it is significant to note here that the *technological pressures to increase farm size have resulted in farms with a large capital investment and a resulting problem for both the parents who may be too young to retire, and young adults who want to farm.*

The increased number of operators that rent a portion of the land they farm should not be viewed as a problem, but as a means of both entry and exit. The average farming lifetime is estimated at 30 to 35 years and is declining. Given the emphasis on ownership by the operator, this means the farm must be repurchased every 30 to 35 years by the succeeding generation.

Prior to the capital gains tax, farmland was often transferred from generation to generation, either within or outside the family by means of an agreement for sale. Because an agreement for sale fixes the selling price and establishes the sale date, capital gains tax becomes effective the year of sale and must be financed.

Saskatchewan and Canada have attempted various program to alleviate the problems of land transfer. The Farm Credit Program, 1959 and the Small Farm Development Program, 1972 - 79 of the federal government; the Saskatchewan Land Bank Program, 1972 - 82; Crown Land Rental and Crown Land Purchase Programs of Saskatchewan Agriculture, 1930; and the Saskatchewan Farm Purchase Program, 1982, are all attempts to deal with the problems of land transfer. The predominant benefit provided has been subsidized credit. *A major problem is that it frequently takes a new farmer several years of operation to achieve a satisfactory rate of return on investment. When interest rates are high the problem can be extreme.*

Opportunities

One method to enhance farm entry and operation is for government land "credit" programs to accommodate off-farm work and part-time farming. . . . it is significant to note that in 1979, the Science Council of Canada argued that *the amount of off-farm work is a symptom of the failure of government programs and an indication of the hidden costs of Canada's cheap food policy. The price of land in most areas is only partially established by its production capability.* [Emphasis added.]

Some of the issues raised by the Task Force in relation to land ownership seem to be taken into account in legislative changes made since its report was compiled in 1985. Restrictions on the ownership of land is one of these, described below.

The Task Force also considered the subject of land use, first in the context of proposals for provincial land use policy guidelines and, ultimately, by linking land use policies and rural development. At pp. 201 - 3, the report stated:

> During its consultations with municipalities and municipal organizations, the Task Force heard requests for the Province to establish provincial land use policy guidelines. The purpose of these guidelines would be to more clearly delineate the nature and extent of the Province's interest in land use at the local level. A number of other provinces have developed such guidelines, with varying degrees of success.
>
> In the mid to late 1970s, the Saskatchewan Department of Environment held a number of workshops with various provincial organizations to develop a provincial land use policy. Following that, a series of public meetings were held to gauge public reaction to the broad land use guidelines that were developed. The guidelines received only limited public support and were considered by many as excessive in their encouragement of central control of the provincial land base.
>
> The federal government established its own policies on land use in 1980. These policies are designed to guide the internal activities of federal agencies and Crown corporations regarding public and private lands. The policies are co-ordinated by Environment Canada's interdepartmental committee on land.
>
> **Current Situation**
>
> The Planning and Development Act, 1983-84 makes provision for - but does not require - the provincial Cabinet to adopt provincial land use policies. The Act states that such policies, if enacted, are to be considered in the preparation and review of development plans, basic planning statements and zoning bylaws throughout Saskatchewan.
>
> It is important to note that *provincial land use policies would not take the form of a provincial plan or zoning bylaw. Rather, provincial land use policies, as envisioned in the Act, would be a series of statements which would explain the overall provincial interest in various categories of land use.* For example, the provincial interest in good agricultural land might be expressed in terms of maintaining land in agricultural production wherever possible and practical.
>
> Another major consideration is the *desire to have local control over development activities.* If provincial land use guidelines were adopted, authority for development approvals could be transferred from the Province to local authorities. This would, in the opinion of the Task Force, provide substantial impetus to the thrust of development activities in rural Saskatchewan.
>
> **Relationship to Rural Development**
>
> *Provincial land use policy guidelines would assist municipalities in drafting their plans and zoning bylaws by giving them a clear indication of the factors that the Province considers when approving local plans. The province as a whole would benefit because it would assure that major concerns which spill over municipal boundaries - such as*

> *retention of good agricultural land - would be adequately provided for in local land use plans and bylaws. The presence of provincial land use guidelines would also help to minimize land use conflicts. The end result should be a more efficient and better informed development process at the local level, a result which would assist in enhancing positive economic development in rural Saskatchewan.*
>
> The Task Force realizes that, for several reasons, the development of provincial land use guidelines would be a complex process, since:
>
> - Provincial interests may, in some cases, conflict with local interests.
>
> - There may be conflict between various interest groups who view land use matters from different perspectives (such as environment, wildlife and agriculture).
>
> - The guidelines should incorporate and maintain a delicate balance between interest group issues, individual property rights and the overall provincial perspective.
>
> The Task Force concluded that, *in the process of developing provincial land use guidelines, the following would be important components of the process*:
>
> - *There should be a Cabinet commitment to the undertaking and leadership responsibility should be assigned to a specified minister*, logically the Minister of Rural Development.
>
> - *Interagency co-ordination should be under the leadership of the minister assigned to the overall undertaking, and should include full liaison with rural and small urban municipalities.*
>
> - *The approach should be comprehensive to avoid policy gaps and to take into account all inter-relationships.*
>
> - *Should be designed for application at both the provincial and local government levels.*
>
> - *Local government input should be included at all levels of the development process.*
>
> - *Budgetary support should be provided for both provincial policy development and municipal planning*. [Emphasis added.]

The Task Force in Saskatchewan canvased provincial land use policies in all provinces and prepared an appendix entitled "Comparative Approaches 1984". We noted with particular interest the section on Prince Edward Island, where the "type" was identified as both "comprehensive" and "issue". The coordinating agency was identified as the "Provincial Land Use Committee". The "implementation mechanism" was identified as: "Royal Commission approach initially; land use committee now". *The degree of success was described as "Regressive"*. The "Comments" were as follows:

> *Many draft policies (340); too controversial; currently municipal planning and development control only. Weak cabinet commitment; public opposition*. [Emphasis added.]

It is noteworthy that the Task Force in Saskatchewan regarded provincial land use policies in Manitoba, where "municipal development plans must consider policies, but may be at variance if approved" as having a "high" degree of success. The comments indicated that the Manitoba plan was "being reviewed after five years of being in effect. Most comprehensive and successful. Few problems."

Some other points from the Task Force are worth reflecting upon. Elsewhere we have made reference, repeatedly, to the importance of the landscape in our tourism industry. It would appear the conclusions we have reached are no different than what the Task Force in Saskatchewan found. At pp. 121 - 2, the Report discussed what it terms "travel motivators":

> Recently, Saskatchewan Tourism and Small Business completed market studies of travellers in Ontario, Alberta, Manitoba, British Columbia, Montana, North Dakota and Minnesota.
>
> In all of these studies, the 19 major activities most often pursued by tourists on pleasure trips were listed. The five most popular activities listed included rural sightseeing, visiting historical sites/museums, urban sightseeing, attending events/festivals, and camping. The relative popularity of each activity is shown in [an accompanying] Table. . .
>
> [The] Table. . .indicates that rural sightseeing is one of the most dominant activities which pleasure travellers pursue on a trip. "Rural sightseeing" means more than a family driving in an automobile looking at grain fields, elevators and small towns. When people travel for rural sightseeing, they combine this activity with other activities such as camping, visiting quality historical sites and museums. At the same time they want to enjoy quality dining, accommodation and services. Here again, development and improvement are required to attract tourists.

Not only did the data show rural sightseeing as "one of the most dominant activities which pleasure travellers pursue on a trip", it ranked as the number one attraction for tourists from four of the seven "markets". Among all of the seven "markets", the only other travel activity that could match or exceed the popularity of rural sightseeing was "Historical Sights/Museums". Even though the data is derived from other jurisdictions which, except for Ontario, are not significant "markets" for Prince Edward Island, the results are not at variance from what studies relative to our "markets" show.

The Task Force also considered property taxes and the commentary there raises some points of interest in relation to the system of property taxation in Prince Edward Island. In addition, the passage at pp. 283 - 4, provides a description of the property tax regime in respect to agricultural land.

> According to The Rural Municipality Act, a bona fide farmer is one who earns his/her chief source of income (over 50 percent) from agriculture. A bona fide farmer pays taxes only on his land, and none on any of his buildings. This definition creates a number of administrative and equity problems and should be changed. For example:

> - How does an assessor know (not having ready access to income information) if the landowner receives more or less than 50 percent of his/her income from agriculture? This is complicated further by the involvement of spouses in farming operations.
>
> - The definition of agriculture, in itself, tends to change from time to time (for example, regarding horse breeders, tomato growers, waste heat establishments and mushroom "farms").
>
> - It appears that a beginning or small farmer is not being treated fairly. A farmer who must rely on off-farm income (exceeding 50 percent) in order to survive loses his farmer status and therefore pays taxes on some of his buildings, unlike so-called bona fide farmers.
>
> - Some feel that a farmer living in a $250,000 farm house should pay more taxes than his neighbour with a similar size farm living in a $60,000 house. They both do not pay any property taxes on their homes.
>
> The Task Force realizes that there are no easy solutions to the above perceived inconsistencies and inequities. It was suggested in a number of presentations that many inequities would be solved if all principal rural residences (small holder or farm), regardless of owner status, were assessed and taxed. Although this would increase farmers' assessments, it could also reduce mill rates to compensate for the assessment of principal residences. The objective is not to raise farmers' taxes, but to achieve greater equity.

The discussion on the subject of "municipal structure" also provided some interesting parallels with the situation in Prince Edward Island. At pp. 285 - 6, this commentary read as follows:

> During its deliberations, the Task Force was frequently reminded of the large number of municipal governments in rural Saskatchewan - 299 rural municipalities and about 494 urban municipalities in the main study area. Individuals and groups with whom the Task Force consulted had varying opinions about the current structure of municipal government. Some indicated that the large number of small municipal governments was desirable because it made possible a close "grassroots" relationship between councils and voters, provided many opportunities for individuals to participate actively in the democratic process, and provided a large resource of elected leaders. In some small urban and rural municipalities, there is one member of council for every 90 - 100 residents, while the comparable figure is one member for every 16,000 or so residents in a city such as Regina. *Clearly, there is a very high degree of representative democracy in rural Saskatchewan.*
>
> *Those questioning the need for such a large number of municipal governments cited the problems of lack of economies of scale and inadequate financial base, which prevent some small governments from providing an adequate range of services and facilities.* They pointed to the relatively high utilization of a number of government programs which already recognize that *some services - such as recreation facilities, fire protection service and ambulance service - can be more effectively provided on an inter-municipal basis.* Further, this group considered that *the current system of municipal government was a significant hindrance to further economic development in some rural areas.* This conclusion was supported by the observation that *in trying*

> *to implement major economic development projects in rural areas, governments and entrepreneurs face an overwhelming task in trying to communicate and co-ordinate with a large number of local government units in the vicinity of a project.* The difficulty of arriving at equitable property tax sharing agreements between the many urban and rural municipalities affected by a large development project was cited as an example of the problem involved.
>
> The Task Force concluded that from the viewpoint of enhancing rural development, a strong case could be made for encouraging greater inter-municipal co-operation. This appears to be especially important for economic and social planning for communities which include both rural and small urban local governments. It is also important regarding the adequate provision of such things as office facilities, fire protection, police protection and road building and maintenance equipment. Provincial funding assistance to encourage more inter-municipal co-operation should be considered.
>
> Elsewhere in this report the Task Force has proposed the establishment of area development corporations as a vehicle for existing municipalities to work together to further economic development at the local level. The Task Force believes that rural and small urban municipalities who co-operate to establish area development corporations should be in a better position to enhance their economic future than those municipalities who continue to go it alone. An ADC professional would provide municipalities with a full-time economic development professional resident in the area, and should provide a stronger relationship between existing government assistance programs and the economic opportunities in the area. Senior governments and entrepreneurs would also benefit from having a locally-based economic development group to communicate with.
>
> . . . the Task Force has recommended a *greater emphasis on inter-municipal co-operation in land use planning matters through more use of district planning commissions.*
>
> While many of the individuals and groups interviewed by the Task Force spoke about the need for change in local government structure, there were also some who indicated a preference for the status quo. It seemed apparent to the Task Force that any action to deal with this sensitive issue must be both cautious and open, and be carried out with a high degree of participation from and co-operation with the organizations directly concerned. [Emphasis added.]

The Province of Saskatchewan has included measures to preserve the family farm in the *Saskatchewan Farm Security Act*, which was enacted in 1988 with some amendments in 1989. We were advised by the Minister of Justice and Attorney General for Saskatchewan that "the provisions of Part VI are currently under active review by our Government and may receive attention in the Spring 1990 Session of the Legislature". While portions of this legislation relate to preservation of the family farm to secure property that has been used in farm financing, Part VI deals with Farm Ownership, previously regulated under the *Saskatchewan Farm Ownership Act* of 1980. Originally, legislation was enacted in 1974. Problems with respect to this legislation were cited by the Task Force on Rural Development, as referred to earlier, and current provisions indicate a positive response was made to alleviate these concerns.

A pamphlet prepared by Saskatchewan Justice ("The Saskatchewan Farm Security Act: Farm Ownership") is perhaps the best vehicle to explain the general objectives of this legislation.

> The Government of Saskatchewan is committed to the preservation of the family farm and believes that agricultural resources should be managed by Saskatchewan residents. The *Saskatchewan Farm Security Act* ensures that residents or corporations engaged in the business of farming will own the majority of Saskatchewan agricultural lands.

Under the provisions of the Act, a resident person is defined as an individual who resides in Saskatchewan for at least 183 days in any year, while a Canadian resident is defined as an individual who resides anywhere in Canada for at least 183 days in any year. A land holding in the Act includes most legal interests in agricultural land but excludes mortgages. An aggregate land holding includes all land holdings of a person and of a spouse and children of minority age. The Act provides that farm land means land, outside of an urban municipality, that is used or can be used for farming. It defines a producer as an individual who is engaged in the business of farming, which is said to include livestock raising, poultry raising, dairying, tillage of the soil, beekeeping, fur farming and any other activity undertaken to produce primary agricultural produce and animals. The legislation distinguishes between agricultural and non-agricultural corporations: an agricultural corporation must be engaged in the business of farming with the majority of all voting shares owned by resident producers; a non-agricultural corporation is one that is not an agricultural corporation. (Shares in a corporation are defined to include membership interests in non-profit corporations and co-operative associations.)

Of particular interest in the *Saskatchewan Farm Security Act* is the definition used for "land holding" in Section 76(e)

> 76. In this Part
>
> . . . .
>
> (e) "Land holding" includes:
>
> (i) farm land;
>
> (ii) any interest in farm land held under an agreement to purchase or lease;
>
> (iii) any interest in farm land held under any agreement that may directly or indirectly:
>
> (A) result in vesting of title to farm land;
>
> (B) confer the right to possession of farm land; or
>
> (C) confer any right or control ordinarily accruing to the owner of farm land;
>
> (iv) those kinds of types of shares, that may be designated by the Lieutenant Governor in Council, legally or beneficially owned in a corporation having a land holding;
>
> (v) for the purposes of sections 87, 95 and 96 and clause 100(b), any interest in a limited partnership where that limited partnership has a land holding;

(vi) any interest in farm land other than that described in subclauses (i) to (v);

but does not include farm land or any interest in farm land held by way of security for a debt or other obligation;

Under the provisions of the most recent legislation, the *Saskatchewan Farm Security Act*, which was passed in 1988 and amended in 1989, the limits placed on land ownership are complex. Residents of the province and of Canada are determined by the "183 day" rule. Subject to several exceptions, non-residents of Saskatchewan cannot (a) have an aggregate land holding with an assessed value for municipal taxation purposes in excess of $15,000, excluding any assessment for buildings and similar improvements; or (b) acquire a land holding which results in the non-resident person having an aggregate land holding with an assessed value for municipal taxation purposes in excess of $15,000, excluding any assessment for buildings and similar improvements. However, this restriction is not applicable to land acquired prior to March 31, 1974 (the date when the first of a series of ownership restrictions came into effect) nor is it applicable to land holdings acquired by non-residents in accordance with the prescribed limitations within the various time frames of successive legislative changes between 1974 adn 1988. Notwithstanding these restrictions and exemptions, Canadians who are not residents of Saskatchewan are limited to the acquisition of 320 acres or two quarter sections, whichever is greater, effective July 1, 1988.

Non-agricultural corporations with a majority of voting shares owned by resident persons or agricultural corporations may have or acquire up to 320 acres of land after August 31, 1988. Otherwise, with some exemptions, non-agricultural corporations are limited to aggregate land holdings of 10 acres. Nonagricultural corporations cannot acquire an interest in land by participating in limited partnerships.

The effects of this legislation require certain property owners to divest some of their holdings and time is allowed for divestments. Non-residents inheriting land from a person who has not been a resident of Saskatchewan for five years, have five years to reduce their holding to the allowable limit. A person who was not a resident for five years has five years upon leaving Saskatchewan to reduce his holding to the allowable limit. A Canadian resident has five years upon leaving Canada to reduce his holding to the allowable limit.

Non-agricultural corporations inheriting land have five years to reduce their holding to the allowable limit. An agricultural corporation which becomes a non-agricultural corporation has one year from the date of becoming a nonagricultural corporation to reduce its aggregate land holding to the allowable limit. Land holdings in excess of ten acres acquired by non-agricultural corporations prior to May 6, 1980 must be disposed of before January 1, 1994.

Certain land holdings are not affected by the *Act*: lands acquired by designated relatives from someone who has been a resident of Saskatchewan for any five years; lands held by a nonresident who was a resident of Saskatchewan for any five years and purchased the land while a Saskatchewan resident; lands acquired by a non-resident prior to March 31, 1974; and land held by an agricultural corporation which becomes a non-agricultural corporation as a result of a transfer of shares to persons entitled to receive those shares under the special exemption provisions.

The Farm Ownership Board may, upon receipt of a written application, grant or refuse exemption to a non-resident person, or to a non-agricultural corporation, to acquire or hold land in excess of that permitted by the *Act*.

The Board may impose any terms and conditions it considers appropriate on an exemption. The Board has investigative powers where it has reason to believe there is a contravention of the Act and such powers are equivalent to those provided in *The Public Inquiries Act*.

Alberta:

The *Agricultural and Recreational Land Ownership Act*, R.S.A. 1980, Cap. A-9, was designed to prevent non-Canadians from buying significant amounts of prime agricultural and recreational land. Originally enacted in 1977, it is a brief piece of legislation, giving the Lieutenant Governor in Council widespread powers over what is termed "controlled land" in the province. The legislation itself provides as follows:

> 1. In this Act,
>
> (a) "controlled land" means land in Alberta but does not include
>
> (i) land of the Crown in right of Alberta,
>
> (ii) land within the boundaries of a city, town, new town, village or summer village, and
>
> (iii) mines and minerals;
>
> (b) "parcel" means an area of land the boundaries of which are
>
> (i) shown on a plan registered or filed in a land titles office, or
>
> (ii) described in the certificate of title to the land
>
> and that has not been divided into smaller areas by an instrument or plan registered or filed in a land titles office, other than a registered road plan or right of way plan, or by a natural boundary shown on a plan registered in a land titles office.
>
> 2. Subject to section 3, the Lieutenant Governor in Council may make regulations, within the legislative authority of the Legislature and complementary to any regulations that he makes pursuant to section 33 of the *Citizenship Act* (Canada), for the purpose of prohibiting, annulling or in any manner restricting the taking or acquisition directly or indirectly of, or the succession to, any interest in controlled land.
>
> 3. Regulations made under section 2 do not operate so as to prohibit, annul or in any manner restrict the ownership by a person of interests in controlled land consisting of not more than 2 parcels containing, in the aggregate, not more than 20 acres.
>
> 4. Regulations made under section 2 may provide for the exclusion from the operation of all or any part of those regulations of
>
> (a) any person or class of persons,
>
> (b) any transaction or class of transactions involving controlled land.
>
> (c) any interest or class of interest in controlled land,
>
> (d) any use or class of uses of controlled land,

> (e) all or any part of the land within the boundaries of a hamlet as defined in the *Municipal Government Act*.
>
> 5. The Lieutenant Governor in Council may, for the purpose of giving effect to this Act and the regulations and any regulations that he makes pursuant to section 33 of the Citizenship Act (Canada), make regulations requiring that a director, officer or member of a corporation specified in the regulations supply the information specified in the regulations in respect of the members of the corporation to the person, in the form and at the times specified in the regulations.

The Alberta Government is quite emphatic that the legislation is not to discourage those existing or future non-Canadian investors who wish to come to Alberta to invest in or to build new manufacturing plants, agricultural processing operations, recreational developments and new home subdivisions or to expand existing plants or similar developments. Joint business ventures between non-Canadian enterprises and Alberta companies have been and will continue to be encouraged, as such activities produce jobs for Albertans and are of significant benefit to the province, according to government literature explaining the legislation.

The Foreign Ownership of Land Regulations, enacted in 1979, were passed under the dual authority of section 33 of the Citizenship Act of Canada and *The Agricultural and Recreational Land Ownership Act* of Alberta. Under these Regulations, foreign citizens and foreign-controlled corporations are prohibited from acquiring an interest in controlled land; Canadian citizens and permanent residents (landed immigrants) are not restricted in any way. Essentially, a "foreign-controlled corporation" is one in which the share ownership is 50% or more foreign owned. However, for public corporations with shares traded on a stock exchange in Canada, only shareholders owning 5% or more of the shares are taken into account, provided two-thirds of the directors are Canadian citizens or permanent residents. The Regulations provide that a trust cannot be used to circumvent the controls. The Regulations do not prohibit the acquisition of an interest in controlled land for pipelines, oil and gas processing plants, refineries, power plants, electric distribution systems, or extraction of coal and aggregate. As well, under certain conditions, industrial processing, manufacturing, commercial or transportation facilities and residential subdivisions are exempt. Wills and the transfer of land on death are not controlled. Under the Regulations, leases up to 20 years are exempt if registered at a Land Titles Office. An acquisition of the majority of the shares of a corporation owning controlled land by an ineligible person or foreign-controlled operation is considered an acquisition of an interest in controlled land. The same principle is involved for an amalgamated or merged corporation. In such situations as these, the foreign-controlled corporation has three years in which to divest itself of the controlled land so acquired. Mortgages are allowed but the foreclosures of a mortgage constitutes an acquisition of an interest in controlled land, and the ineligible person or foreign-controlled corporation must divest himself or itself of the land within three years. A "foreign controlled limited partnership" is one in which 50% or more of the value of the outstanding contributions by limited partners are made by ineligible persons or foreign-controlled corporations. An ineligible person or foreign-controlled corporation may enter into an option up to one year pending his (or its) becoming eligible under the regulations.

The enforcement of the *Foreign Ownership of Land Regulations* is by sworn declaration attached to a transfer of land and by investigative procedures in conjunction with the Land Titles Offices and the Companies Branch. The Registrar of Land Titles must refuse to register a transfer, transmission, caveat or lease which is without a proper statutory declaration. A variety of penalties for breaches of the legislation are referred to in the general publications explaining the provisions. It is pointed out that the *Citizenship Act* (Canada) sets as a penalty for breach of the *Act* or *Regulations* a fine of up to $10,000 and imprisonment of up to one year or both. It is also noted that the *Criminal Code* sets a penalty of up to 14 years imprisonment for swearing a false declaration. Where controlled land is acquired contrary to the *Foreign Ownership of Land Regulations*, procedures for judicial sale are set forth. Under the regulations, corporations may be required to supply information concerning the beneficial ownership of their shares. The minister may require information, verified by statutory declaration or otherwise, in order to determine whether a particular transaction meets the requirements of the legislation. He also may instruct the Registrar of Land Titles to refuse to register a document which appears to be in contravention of the regulations. Specific exemptions may be made by Executive Council, where the exemption will allow development which will be of economic benefit to the province of Alberta.

The *Foreign Ownership of Land Regulations* are not retroactive for transactions that have been registered. Agreements for sale, interim agreements and options to purchase signed before April 26, 1977, and registered by August 1, 1979, are honoured, except those involving more than 5,000 acres (2025 hectares). Transactions involving more than this quantity of land must be submitted to Executive Council, which may or may not approve the land transfer.

Requests for exemption must be submitted in writing and include such information as: the reason(s) for requesting the exemption; the legal description and size of the land involved (including a copy of the title(s)), the legal description and size of "controlled land" already owned; the present and proposed use of the land; and the present and proposed ownership (including the share ownership allotments in the case of corporate applicants). Those who seek an exemption are advised that the length of the review process will vary from request to request, depending on the information provided and the need to verify the information. Personal contact may be required in some cases. It is generally anticipated that applications will be processed in four to six weeks.

The *Agricultural and Recreational Land Ownership Act* is by no means the sole legislation in the Province aimed at controlling lands. Other measures more directly related to land use than to land ownership are designed to keep land in open spaces for agricultural, forestry or recreation usage. Three principal programs are in effect in that regard. The purpose of one of these, the Ecological Corridor Agreement Program, is to preserve sensitive areas next to streams in a natural state. This program is used only on land the Department of Forestry, Lands and Wildlife has determined to be suitable for sale. Lands affected by larger watercourses, or where a high proportion of a parcel must be protected, are not sold. By signing an Ecological Corridor Agreement, the purchaser agrees to leave a buffer next to a watercourse or water body in a natural state. The Reservation Program operates by formally registering an interest against public land, identifying public land and resources required to achieve particular land use or conservation objectives. Presently 9.4 million acres of public land in Alberta are under "reservation/notation". Under the Natural Areas Program, natural areas, which are protected public lands, are set aside with the main objective being the maintenance of their natural features . Their management emphasizes public appreciation, education, research, and/or recreation. Presently, more than one-quarter of a million acres are protected under this program. These programs relate to public lands - and reflect the fact that Alberta (like many provinces and unlike Prince Edward Island) has a sizeable proportion Crown lands.

Alberta enacted a *Soil Conservation Act*, R.S.A. 1980, cap. S-19.1, in 1988. This legislation provides a mandatory duty on all landholders, (a landholder is defined as the occupant of the land or, if there is no occupant, the owner) to take "appropriate measures (a) to prevent soil loss or deterioration from taking place, or (b) if soil loss or deterioration is taking place, to stop the loss or deterioration from continuing". Agricultural fieldmen appointed under other legislation or soil conservation officers appointed under the *Soil Conservation Act* have the power to direct the landholder to take remedial measures and to do so within a time period. If the landholder does not comply, the soil conservation officer can enter onto the lands and carry out the remedial measures, demanding payment for any expenses incurred. Unpaid expenses are added to the taxes against the land. The legislation contains an appeals procedure with appeals being channelled to the rural municipality in which the land is located or a three-person tribunal appointed by the Minister of Municipal Affairs. There are offenses under the legislation with fines of up to $5,000 and there are prohibitions against removing topsoil from land or burning stubble on land without a ministerial permit. The legislation is not entirely a new thrust; it replaces the earlier *Soils Conservation Act*, R.S.A. 1980, c. S-19.

Special property tax considerations are given to Alberta farms but land leased from private individuals is not eligible for the "exemption". The property tax provisions are complex.

Agricultural land is assessed on the basis of what a farmer should pay for land if its most reasonable use is agriculture. Other influences such as recreation or other development potential are not recognized in the assessment. To arrive at the agricultural value, the assessor must take into account soil quality, variables which might affect the land's ability to produce, and any other factors which may increase the costs of production.

On farm properties, residences are assessed at 65% of "depreciated replacement cost". (Depreciation is defined as the loss in value due to age, location and other causes while replacement cost is defined as the cost of material and labour to construct a new similar building.) Where there is a residence, the first 3 acres of land is assessed at 65% of its market value. The remainder of the land is assessed at agricultural value. Farm outbuildings are exempt from assessment to the extent they are used for farm purposes. An exemption or reduction in assessment for an owner's residence is based on the amount of qualifying agricultural valued land assessment in the owner's unit. The maximum exemption for this residence is $40,000. Additional residences used chiefly for farm purposes will be exempt to a maximum of $20,000 per residence, providing the owner has qualifying agricultural valued land remaining in his unit after his first exemption has been calculated. Lands owned or under lease from the Crown or a municipality make up an owner's unit. Land leased from private individuals is not eligible as an exemption. Buildings on non-farmland used exclusively as greenhouses, for the purpose of crop storage or for the purpose of housing livestock or poultry other than for commercial purposes are exempt from assessment to a maximum of $5,000 per parcel.

The Alberta Government has been active in the study of a number of land-related issues. For example, the Land Use Branch of Alberta Agriculture did an extensive "Agricultural Land Base Monitoring Study" in response to an accelerated demand for high capability agricultural land from competing non-agricultural land uses. *The study found a net loss of 52,000 acres - only 0.1% of Alberta's 51 million acres of farmland between 1982 and 1985. However, the trend was considered "significant from the point of a cumulative reduction in the natural productivity of the agricultural land base".*

The most productive lands in the province were being removed from agriculture while land being brought into production was of inferior classifications. The conclusion of the study, summarized at p. 23, was as follows:

> In conclusion, Alberta's agricultural land base is not in jeopardy. However, if current land use trends continue unchecked there may be significant long term impacts to the quality of Alberta's agricultural land base. Although the magnitude of land use changes has been relatively small over the past four years, it is evident that the quality of the agricultural land base is slowly deteriorating. In addition, it is anticipated that the economic conditions responsible, in part, for the decrease in demand for agricultural land will be reversed. As the province's general economy improves, the demand for agricultural land for non-agricultural purposes will increase. Historic patterns indicate that settlement generally occurs on or around the highest capability agricultural lands. For this reason agricultural lands will continue to be lost to competing non-agricultural uses around settled areas. Alberta's agricultural land base is a finite resource which must be managed wisely. Almost all of Alberta's better quality agricultural lands have already been developed for agricultural production. Therefore, any land lost can only be replaced with lower capability land. In order to allow non-agricultural developments to occur, while ensuring the long term viability of Alberta's agricultural land base, it is recommended that policy discussions stress that these developments be directed towards lower quality agricultural land.

Alberta Agriculture has also undertaken a study, completed in 1987, of "smallholdings" which were defined in terms of 20-, 40- and 80-acre parcels. In the introduction to "Agricultural Smallholdings Study: Land Use Implications", Tamara Hursin, who prepared the study for the Land Use Branch of Alberta Agriculture, provided an interesting background analysis.

> Historically, the quarter section has been the minimum parcel size for agriculture activities in Alberta. Today, there is an increasing demand for the subdivision of quarter sections into smaller agricultural parcels. Smallholdings, parcels 20 to 80 acres in size, are intended for extensive and intensive agricultural or small scale agricultural pursuits, usually in association with country residences.

> *Past studies indicate smallholdings have negative impacts on agriculture. Miller (1980) showed non-agricultural related land uses begin to occur more frequently on parcels of land 20 acres or less in size. Hanus (1981) found that on a per acre basis the average market value of 80 acre parcels . . . was 52 percent higher than quarter sections.*
>
> Rural planners have taken opposing views on the agricultural impacts of smallholdings. *One view is that small agricultural holdings become large residential lots; thus, effectively removing land from production. Opposite views suggest that smallholdings are ideal for accommodating small scale agricultural pursuits, or are farmed more intensively producing more per acre than larger farms.* Present regional and municipal subdivision policies regarding creation of small agricultural holdings reflect these different views. While many municipalities allow smallholdings, the most common being 80 acre parcels, the majority of regional and municipal planning documents are more restrictive supporting the position that except for intensive agricultural operations, the quarter section is the parcel size that best accommodates Alberta's typical extensive cropping grazing practices.
>
> The absence of *substantive research regarding the impacts of agricultural smallholdings leaves restrictive regional and municipal rural subdivision policies open to question.* Public and political pressures are being exerted for policy changes allowing subdivision or quarter sections into smallholdings. [Emphasis added.]

The study examined 988 smallholdings, ranging in size from 12 to 85 acres and identified 23 different current land uses. *Less than 2% of the 988 cases had intensive agriculture in dominant use.* The results of the study were summarized at pp. 19 - 22, as follows:

> The Agricultural Smallholdings Study reveals a *significant trend towards country residential uses as parcels decrease in size* from 80 to 20 acres. While 80 acre parcels are used effectively for agricultural pursuits, the use of 40 and 20 acre parcels is often not consistent with their intended agricultural use. Consequently, 40 and 20 acre subdivisions *fragment the agricultural land base and result in non-agricultural related uses on quality agricultural soils.*
>
> Study results show the agricultural quality of smallholdings is relatively similar regardless of parcel size. Consistent with the agricultural intent of smallholdings, the majority are located on arable and potentially arable CLI class 1 through 4 soils. This majority is 83 percent for 80 acre parcels and 58 and 61 percent for 40 and 20 acre parcels respectively. Approximately half of the 80 and 20 and one-third of the 40 acre parcels are located on arable class 1 through 3 soils. Arable soils have the highest capability for sustained annual production of cultivated crops.
>
> Based on the agricultural capability of smallholdings, results indicate an under-utilization of 40 and 20 acre parcels for agricultural pursuits. . . . [An accompanying graph] shows a significant trend away from extensive agricultural use to a country residential use as smallholdings decrease in size from 80 to 20 acres. This trend indicates *a shift towards non-agricultural related land uses as parcel size decreases*. Intensive agriculture, one intended use of the small parcels, occurs on less than 5 percent of the small holdings. Results show 40 acre parcels to be transitional. Although residential use dominates on 40 acre parcels, unlike 80 and 20 acre parcels there is no large gap between extensive agriculture and residential use. *As parcel sizes*

decrease there is a further significant trend towards small scale agricultural pursuits in association with residential parcels. These agricultural pursuits are a secondary use on the parcel and are in the form of recreational agriculture only, such as hobby farms. Hobby farms occur on approximately one-quarter of the residential 80 and 40 acre parcels and one-half of the residential 20 acre parcels. *Recreational agriculture is not an efficient use of arable agricultural land.*

As land use changes shift from extensive agriculture to residential use there is a corresponding shift away from crop production. . . . Unlike extensive agricultural 80 acre parcels, maximizing production through the raising of crops is not required on residential parcels as *the land is now in a consumptive use rather than a productive use.* A pasture or forest cover is easy to maintain on residential parcels and associated hobby farms utilize pasture for grazing.

Forest, pasture and crop cover are all common on residential 40 acre parcels. The predominant location within the parkland region of the province accounts for the forest cover. *A crop cover suggests land rental to neighbouring farmers.* Pasture predominates on 20 acre residential parcels due to the presence of hobby farms and the parcels location within the prairie region of the province.

Study results indicate the frequency of smaller parcels increases as you move towards major urban centres. The majority of 80 acre parcels are located in rural regions of Alberta. These parcels are the most common smallholdings in Alberta with approximately one-third of the municipalities allowing such subdivision including all municipalities within the study area. Within the study area, only those municipalities surrounding Calgary and Edmonton support 40 and 20 acre subdivisions. Over 95 percent of these parcels are located close to Calgary and Edmonton with one-quarter of the 40 acre and one-third of the 20 acre parcels located within the urban fringe. The proximity of 40 and 20 acre parcels to these two cities indicates a strong urban demand for parcels of this size. *This urban influence has resulted in the majority of these parcels being used primarily for residential purposes regardless of the parcels high agricultural capability or agricultural intent at the time of subdivision. Urban employees do not require financial returns from their parcels and consequently the residence often becomes the dominating use of the parcel.*

Parcels 40 and 20 acres in size are not used effectively for agricultural pursuits. They often become large residential parcels fragmenting the agricultural land base and removing quality agricultural land from production. Recreational agriculture, if present on these residential parcels, is an inefficient use of quality lands. If permitted, 40 and 20 acre subdivisions should be relegated to the lower capability agricultural lands, [sic] an exception being for intensive agricultural parcels. The continued agricultural use of 80 acre parcels following subdivision and the pre-dominating residential use of the transitional 40 acre parcels indicates 80 acres is the minimum or threshold parcel size for extensive cropping and grazing prac tices. Eighty acres is a minimum parcel size for extensive agriculture, however, *increased land values may lead to increased land fragmentation and rural residences. These factors may negatively affect agriculture and should be taken into account before subdivision decisions are made.* Provincially, land values per acre are approximately one-third higher for arable 80 acre parcels compared to arable quarter sections. However, *80 acre parcels have a lower total cost than quarter sections making them*

> *affordable to more people.* Increased future fragmentation of the land base is a real possibility if quarter sections are split into 80 acre parcels. Presently, the *Alberta Planning Board allows one developed 10 acre residential parcel per unsubdivided quarter section with an option open to municipal governments to allow for a residential parcel regardless of development.* With an increased number of 80 acre parcels, there may eventually be a demand for one residential parcel per 80 acres. As such, this will increase fragmentation of the agricultural land base with the potential for four titles per quarter section: two 10 acre parcels and two 70 acre parcels. *The resultant increase in rural residences may lead to increased potential conflicts between neighbours regarding nuisance from farming operations.* [Emphasis added.]

Although the Albert definition of a "small holding" involves a parcel of land much larger than what would be considered a "small holding" in Prince Edward Island, the conclusions are not irrelevant in our terms for the trends identified in the study would likely be evident in this province if a study were done of "small holdings" defined in terms of categories such as 1, 5 and 10-acre lots or 5, 10 and 20-acre lots.

The concerns with respect to agricultural land in Alberta, exemplified by these studies prepared by Alberta Agriculture, were also mirrored by work done by the Environment Council of Alberta. In 1981, it released two studies: "Agricultural Land and Land Use Planning in Alberta: A Review of Planning Legislation and Practices" by Mary Gordon and the "Urbanization of Agricultural Land" by Peggy S. Thompson. A year later, "Soil Fertility and Land Productivity in Alberta" by W. B. McGill was prepared for the Environment Council of Alberta. All indicated the land base for agriculture in the province should not be taken for granted.

Even though these concerns have arisen in the past decade, Alberta is no stranger to land use planning.

> The first Alberta planning statute was a response to rampant land speculation. The Town Planning Act of 1913 allowed municipalities to prepare town planning schemes for land awaiting development. But the boom ended, and no such schemes were put in place.
>
> In 1928, the Town Planning and Preservation of Natural Beauty Act established a Town and Rural Planning and Advisory Board to help municipalities formulate and carry out town planning schemes. The Act also empowered the Board to make regulations controlling land use (that is, buildings and signs) along highways, a matter which was the concern of the influential United Farm Women of Alberta. Rural Alberta thus asserted its presence, redressing the urban bias of the first efforts at planning legislation. [Alberta Municipal Affairs, "A Guide to Land Use Planning in Alberta", n.p., n.d., p. 7.]

Over the next 60 years, Alberta's history of planning shows an interesting trend: *when economic conditions are depressed, the level of planning activity is reduced temporarily, only to rise in intensity with an economic boom.* Currently, land use planning takes place within the framework of the *Planning Act* that has been amended, revised and rewritten several times over the years. The evolution of planning has resulted in a large part of the responsibility for urban and rural development resting at the municipal level, not with the provincial government. Some coordination is effected through the Alberta Planning Board which has a number of functions including some appellate and advisory ones. Coordination is also achieved through regional planning commissions. However, the Saskatchewan Task Force on Rural Development in comparing land use policies in other jurisdictions in 1984, ranked Alberta's success as "moderate" and comments were that *statements of provincial interests or policies are lacking or unclear. Appears to be a lack of interagency coordination and provincial government policy commitment.*". [Emphasis added.]

The Alberta Planning Board has developed policies with respect to the conservation of agricultural land. In so doing, the Board identified the five major competing demands for agricultural land. (1) "Country Residential Developments" are extensive users of land; they are frequently located on the best lands, close to urban areas. Residents in these developments often pressure the agricultural community to remove intensive agricultural uses and to provide urban services. (2) "Urban Fringe Areas" result in urban sprawl and hopscotch developments outside built-up areas; these are costly to service and often unsightly. Premature spread of urban development can result in farmland being removed from agricultural uses before it is necessary. Premature development can remove options for future land use. (3) "Rural Industrial Developments" are a consumer of large areas of land. The best agricultural lands are flat, welldrained and ideal for industrial development. (4) Conversion of the best agricultural lands (CLI 1,2,3) are most sought after for development. Their distribution is limited and generally close to settlements. (5) "Development Within Urban Areas" becomes one of the major competing demands for agricultural lands where, occasionally, urban municipalities will have farmland within their boundaries. Premature conversion of these lands to urban uses remove them from agricultural productivity before it is necessary.

The Alberta Planning Board specified five policy areas in response to these major demands for agricultural uses.

With respect to the protection of the better lands, the Alberta Planning Board indicated that a major role of a regional plan is to provide criteria for the identification and conservation of better agricultural lands. Once the criteria are in place, it is the municipalities' responsibility to ensure that better agricultural lands are conserved. The Province has directed that regional plans make it mandatory for municipalities to protect better agricultural land, in their general municipal plans and land use bylaws.

As for residential development in agricultural areas, the Planning Board was emphatic that regional plans must prohibit multi-parcel country residential development on better agricultural lands. It pointed out that country residential development is an extensive user of land and it can be justified only on poorer agricultural lands. *The only exception that the Board has provided for is the separation of a single developed residential parcel from an unsubdivided quarter section. The Provincial Government considers this is right, available to landowners across the Province.* The Planning Board enumerated a number of reasons for such a policy: it preserves the right of the landowner to dispose of his agricultural operations and still reside on the farmstead; it allows for the disposition of surplus residential buildings no longer required for the agricultural operations; it allows the landowner to mortgage only a portion of the property, leaving the rest free of financial encumbrances; it provides an opportunity for family members to participate in the agricultural operation and for the transfer of farm operations to the next generation; and it provides for an alternative style of rural living, other than clustered residential or hamlet living. Provision may also be made in the regional plan for the separation of an alternative single parcel from an unsubdivided quarter section, for residential use. However, this alternative policy operates only at the discretion of the local municipality. In both cases the Board has directed that only the minimum land area required be subdivided, so as to limit loss of agricultural land. In most cases, the parcel size is limited to 3 acres or less, unless a larger area is required to accommodate existing development.

The guiding principle with respect to the conversion of better agricultural land to rural industrial uses is that it should only be permitted when suitable alternative locations are not readily available. If it is feasible in terms of servicing and transportation requirements, economic considerations, and environmental constraints, then rural industrial uses must be accommodated on poorer agricultural land. It is the Board's view that municipalities are in the most advantageous position to make the necessary trade-offs between the competing uses, not only because they have the closest association with the issues involved, but also because they are accountable to the local people who will have to live with the results.

Special policies apply to the urban fringe to prevent the premature conversion of agricultural land to nonagricultural uses and to protect options for future urban expansion. The Subdivision Regulation under the Planning Act prohibits country residential subdivision in the urban fringe, even on poorer agricultural land. The concern is that such development would pre-empt more intensive uses and place pressures on the conversion of better agricultural land for high density urban use. *Rural industrial and highway commercial uses in the urban fringe are permissible, on better agricultural land, only if no alternative locations are reasonably available.* The Board encourages annexation for urban use to be directed to poorer agricultural lands.

The Alberta Planning Board conceded that it is difficult to impose restrictions on the change of land use from agricultural to urban development, since the majority of urban municipalities in Alberta are located on better agricultural lands. To prohibit the expansion of urban land uses onto agricultural land would essentially result in a no-growth situation for many urban municipalities. Yet it is important to consider the manner in which urban development occurs, since premature conversion would result in unnecessary and early losses of agricultural use. For this reason, emphasis is placed on avoiding premature conversion of agricultural land for urban uses.

British Columbia:

The only restriction in respect to land ownership in the Province of British Columbia applies to Crown land. Section 6 of the *Land Act*, R.S.B.C. 1979, cap. 214, limits Crown grants to Canadian citizens and permanent residents.

Under the *Assessment Act*, special valuation techniques are applied to farm properties in order to shield farmland owners from paying taxes on land values affected by nearby urban growth pressures. The land is valued for its worth as a farm, rather than its actual or market value. "Improvements" including the farm residence, buildings, fruit trees and farm equipment and machinery are subject to exemptions which vary according to municipal status and according to the purpose of the tax (general property tax, school tax, etc.). Farmland and the farmer's residence are subject to full taxation in municipalities but there are exemptions for certain improvements and an exemption of $50,000 of actual value for other improvements. For rural areas outside of municipalities, there is a full exemption for all farm improvements, including the farm residence. Only farmland itself is subject to taxation for general purposes. (School taxation makes farm residences taxable, provides a 50% exemption for farmland and a $50,000 exemption for farm improvements. This tax is applicable in both municipal and rural areas.)

The Province of British Columbia has a *Soil Conservation Act* which, with some exemptions, requires permission be obtained from a local authority before any soil is removed or added. To obtain the necessary permit, an applicant must provide considerable details, including information on the soil characteristics and a plan on the location of the removal or filling. The local authority is empowered to set terms and conditions on the removal or to require security from the applicant. Permission is to be denied, however, where the soil removal would produce certain adverse results; among these factors, if the removal would make the land unsuitable for agriculture or adversely affect farming on adjacent land, the local authority is not able to grant a permit.

To protect agricultural lands in British Columbia, where only about 5% of the total land area has the combination of soil and climate characteristics that will allow cultivation of agricultural crops, the province enacted the *Agricultural Land Commission Act*, R.S.B.C. 1979, cap. 9 nearly two decades ago. This legislation established a Crown corporation with at least 5 members appointed by the Lieutenant Governor in Council and it provided as well that an unspecified number of regional advisors may be appointed to the Commission. The Commission "with the prior approval of the Lieutenant Governor in Council" was given power to designate agricultural land reserves where the land (including Crown land) was suitable for farm use. By 1979 the Commission had established an Agricultural Land Reserve (ALR) of some 11.6 million acres that included both private and Crown-owned land and forested, farmed and vacant land.

Some ALR units are vast tracts of many thousands of acres, as in the Peace River area; others are small pockets of only a few tens of acres, as in the Gulf Islands. In total, the Agricultural Land Reserve comprises those lands within the province that have the physical capability to grow food.

The ALR is regarded as a relatively stable zone. Within the ALR, subdivision and use of lands are restricted by regulations under the *Agriculture Land Commission Act*. Local and regional governments, as well as other provincial agencies, are expected to plan in accordance with the provincial policy of preserving agricultural land. The *Agricultural Land Commission Act* takes precedence over, but does not replace, other legislation and bylaws that may apply to the land in an Agricultural Land Reserve.

The ALR is based upon the lands' potential for agricultural use, rather than its present use or parcel size. In order to determine which lands in the province have this potential, the Agricultural Land Commission used the land capability information collected as part of the

Canada Land Inventory (CLI) program. Under this federal-provincial program, and over a period of about ten years, land capability for agriculture maps were prepared for most areas throughout British Columbia.

The Canada Land Inventory classification system for agriculture rates land from Class 1 to Class 7, depending upon the range of crops that can be grown. The agricultural capability ratings are obtained from basic soil and climate information and involve both aerial photo interpretation and extensive field work by soil scientists. Under the Canada Land Inventory system, lands that have the ideal combination of soil, climate, slope and drainage to grow the widest range of agricultural crops are rated Class 1. (Less than 1/2 of 1% of British Columbia is Class 1 agricultural land.) As minor limitations to agriculture occur, such as rolling topography or a shorter growing season, certain crops can no longer be grown successfully and the land is then rated Class 2 or Class 3. Lands that are rated Class 4, 5 or 6 indicate a progressively narrower range of crops as the physical limitations to agricultural use of the land become more restrictive. Areas that have no capability for agriculture whatsoever, such as rock outcrops or very steep bluffs, are rated Class 7.

Like its landscape and its climate, British Columbia's agriculture varies greatly from region to region. As a general guideline, Canada Land Inventory Class 1 - 4 lands were regarded as the key agricultural lands of the province and they were included within the provincial Agricultural Land Reserve. In addition, in certain regions of the province, especially where ranching, dairying or mixed farming was the most characteristic type of agriculture, Class 5 forage lands and Class 6 spring and fall grazing lands were also included within the Agricultural Land Reserve.

Under the Canada Land Inventory system, a lower capability class is not necessarily synonymous with lower quality agricultural land and, in a regional sense, certain lands may have a special importance to agriculture because they are well suited to a specific crop. For example, in west central British Columbia, because of the short growing season, many of the lands are rated Class 5, suitable only for forage production. The soils are excellent, however, and these Class 5 forage lands are an integral part of beef farming in that area. In the southern interior, it is the natural grasslands that are important to the ranching industry, even though most of these lands are rated Class 6 under the Canada Land Inventory system.

In drawing the Agricultural Land Reserve boundaries, therefore, the Commission used as its main criteria agricultural capability as defined under the CLI program, but also took into consideration the special importance of certain lands to the agriculture of the region. Minor areas of non-agricultural land, such as small rock outcrops, gullies and escarpments, may also occur within the ALR where the available scale of mapping does not allow their delineation or where intensive non-agricultural use of such lands would conflict with farm use of surrounding better capability lands.

Preservation of the agricultural land resource is considered to be a first and very important step toward protecting British Columbia's food-producing options for the future. The land resource is basic to agriculture, but also important is the farmer who husbands that land, the economic conditions under which agriculture must operate, and the expectations of the rest of the population, both as neighbours and consumers. Each type of agriculture has its own requirements, not only in terms of the amount and kind of land required, but also in terms of support services, such as packing, processing, transportation and marketing facilities. Without these services to back up the efforts of the farmer to produce food, agriculture cannot thrive. There are also other factors that can undermine the efforts of the farmer, disrupt the farm community and, therefore, endanger the health of the agricultural industry. Within the rural community, for example, conflicts can develop between those who are actively farming the land and those non-farm residents who have moved to the area, attracted by the rural setting. On a broader scale, land use decisions by government and private industry - whether they involve transportation corridors across farmlands, taxation policies or major resource development projects - can work against the efficient farm use of land within the Agricultural Land Reserve.

The Agricultural Land Commission views all of these concerns as part of the task of preserving agricultural land in the long term. If steps are not taken to protect the farmer and strengthen the farm community, then saving the land will not be enough, and British Columbia's agricultural industry will not survive.

A number of land uses are permitted in an Agricultural Land Reserve. These have been enumerated in Section 2 of the *Agricultural Land Commission Subdivision and Land Use Regulation*, B.C. Reg. 7/81, as follows:

> (a) storage and sale of agricultural products produced on the individual farm on which the storage or sale is taking place;
>
> (b) construction of buildings or structures necessary for a purpose referred to in paragraph (a);
>
> (c) construction of one single family dwelling unit and accessory buildings and structures including ancillary service and utility installations and connections, per land registry parcel;
>
> (d) harvesting of trees and the carrying out of all silvicultural and forest protection practices;
>
> (e) ecological reserves established under the *Ecological Reserves Act*;
>
> (f) a reserve or area of land or habitat set apart for wildlife, providing the surface of the land is not subject to substantial works and, for the purposes of this paragraph, burning or thinning of the natural growth from time to time is not a substantial work;
>
> (g) parks and recreation reserves, whether established by the Province, a regional district or a municipality, that are left or kept in their natural state except to the extent necessary to facilitate outdoor recreation by modifying the site to provide public access; but developed facilities for access, including roads and parking, shall not exceed, where the park is
>
> (i) less than 2 ha, 1,000 m^2 or
>
> (ii) 2 ha or more, 4,000m^2,
>
> (h) fish farms;
>
> (i) minor highway, road, or railway operations and construction including the following:
>
> (i) minor improvement of drainage works, including cleaning and deepening of ditches;

(ii) easing one curve;

(iii) widening, dedication, or construction of highway, road, or railway rights of way provided that the area involved in widening, dedication, or construction is less than 2500 m^2/km of road;

(j) expanding the workings of an existing gravel pit to a maximum of 8093.5 m^2 in area including the areas already excavated;

(k) construction and maintenance of dykes and related pumphouses and ancillary works, including construction and maintenance of access roads and facilities made necessary by the threat of flooding;

(l) land development works including clearing, draining, irrigating and construction of reservoirs and ancillary works, where the works are required for farm use of the property on which the works are located.

However, these provisions do not enable a landowner to avoid compliance with other legislation, bylaws or decisions of relevant authorities that may apply other constraints, including zoning, subdivision and any other land use legislation.

To a limited extent, subdivision may be permitted in an Agricultural Land Reserve. According to section (1) of the regulations, there can be approval where

(a) the proposed subdivision

(i) does not result in an increase in the number of land registry parcels for the land concerned when compared with the situation existing at the time the application for subdivision was made,

(ii) involves boundary adjustments that, in the opinion of the approving officer or Board of Variance, will allow for the more efficient use of agricultural land or the better utilization of farm buildings for farm purposes, and

(iii) create no land registry parcel less than 809.35 m^2 in area, or

(b) the proposed subdivision consolidates 2 or more land registry parcels into a single land registry parcel by elimination of common lot lines.

As a general rule, the Agricultural Land Commission regards subdivision of land in the Agricultural Land Reserve to be detrimental to the agricultural use of that land. The Commission takes the position that "subdivision of a specific parcel or area often creates expectations of possible subdivision over a broader area and small parcels may limit the range of agricultural options." ("A Guide to the Relationship between Agricultural Land Reserves and Local Government Plan and Bylaws", published jointly by the B.C. Ministry of Municipal Affairs and the Provincial Agricultural Land Commission, 1982, p. 7).

This policy is at the heart of a current controversy involving the Agricultural Land Reserve Program. The issue is centered in the Okanagan Valley where the owners of apple orchards wish to sell their lands for housing subdivisions in an area of growing demand for housing and in the face of a collapsing apple market. The outcome of what has been an ongoing dispute for some time is now awaiting the results of a special inquiry.

Other Jurisdictions:

While we have referred, throughout our report, to examples of problems and/or solutions that are occurring elsewhere, many of these have been in the North American context. Like environment issues, land concerns are felt on a global scale.

This became very obvious from the recent Small Countries Conference conducted by the Commonwealth Parliamentary Association where the Speaker of the Prince Edward Island Legislative Assembly, Hon. Edward Clark, provided input on the province's land issues. The subsequent report in The Parliamentarian indicates other delegates could empathize with many of the Island concerns.

Moreover, this article ("Land Policy: Land Ownership, Land Use and Landscapes" in *The Parliamentarian*, vol. LXXI, no. 1, January, 1990, pp. 66 - 9) provided a snapshot of some laws in place in other parts of the world. Excerpts will illustrate the tenor of the concerns and responses:

> Delegates from the Cayman Islands, the Falkland Islands, the Soloman Islands, the Turks and Caicos Island, the Cook Islands and the Isle of Man joined Mr. Clark and Members from Bermuda, Guernsey, The Bahamas, Barbados, Belize, Western Samoa, Vanuatu and St. Vincent and the Grenadines in exerting *the right of small states to place restrictions on the amount and type of land to which non-nationals should be allowed access. This conviction was not weakened by the admission of many delegates that their countries needed foreign investment.*
>
> *The most popular form of restriction was to allow foreigners to lease but not own land.* This practice was followed either wholly or partly in the Solomon Islands, The Turks and Caicos, the Cook Islands, Grenada, Vanuatu and Western Samoa, and advocated by delegates from the Cayman Islands and Bermuda.
>
> . . . .
>
> *Bermuda had experienced a boom in recent years which had forced land prices to escalate. This caused hardship for people who were forced to take out large mortgages, and effectively priced the young and the retired out of the housing market,* he said.
>
> Another delegate from Bermuda agreed that one price the island had paid for its development boom was a loss of agricultural and virgin land to urbanization, especially tourist development and housing. *There was danger in unplanned progress that did not consider the effects on the landscape and the people.* He advocated protective measures to safeguard land ownership for local people, urging each small country's government to seriously consider whether it should allow foreigners to buy rather than lease land.
>
> A similar land boom had occurred in the Cayman Islands. A delegate from the Island's Legislative Assembly was critical of past policies which he said *had allowed foreigners to buy up much of the coastal property.* Some developers were now buying up inland sites. *North American real estate agents were moving into the Islands to sell even more property to non-residents. Caymanians were increasingly becoming landless people,* he said.

The Islands were also losing their indigenous flora as foreign owners tended to strip their land and plant the lawns and gardens they wanted.

While he acknowledged that the Caymanian economy was heavily dependent on foreign investment and tourism, he argued that land should only have been made available to non-residents on long-term leases of perhaps 50 or 99 years. Land could not be taken back from non-residents, but he advocated a ban on future purchases so only leasing would be allowed.

The Turks and Caicos Islands had already turned to leasing to stem its foreign-fuelled land boom, but a delegate from the Caribbean dependency said it had also imposed restrictions to stop speculation. The government which owned 60 per cent of the land, offered property to local people at preferential prices. *Previous policies to attract tourist developers and wealthy retired immigrants had sent land prices soaring, to the detriment of local people.*

He noted that leases as long as 250 years were granted to foreigners who invested in the Islands; but *a great deal of land was left idle by foreigners who merely retained it for speculative purposes*. The Turks and Caicos was a tax haven, so it could not use tax regimes to force owners to put their land to good use.

. . . .

Two Barbadian Members agreed that land ownership must be preserved for local people. They also noted that one of the Caribbean island's biggest land problems was beach erosion and slippage. No solution to this problem had been identified.

The first speaker explained that the country's land use legislation was being updated now and would be again regularly in the future. *The needs of tourism, business and agriculture had to be balanced with the requirements for housing, social development and environmental conservation. There was a growing demand for more recreational land, both for tourists and local people.*

The second Barbadian blamed tourist and other development for *restricting access to beaches and contributing to coastal erosion. He noted that other countries levied a tax on land purchases by non-residents.*

. . . .

Land use regulations were currently being assessed in the Channel Island of Guernsey, said a Member of its States. *Development, traffic and leisure demands were putting pressure on the available land and awakening residents to the need to conserve the natural environment and historic buildings.*

She said land use controls should address five issues: the competing needs of the population and the environment, the mechanism to resolve disputes, the promotion of environmental concerns, the removal of eyesores and the restoration of derelict land and legal protection of historic buildings.

Governments should also maintain public lands well, as an example to others, and they should *be prepared to acquire private land to preserve it for future generations.*

> The Isle of Man was also *intent on protecting its architecture and the character of the island through planning regulations and legislation,* said a Member of the Manx House of Keys. He favoured steps to keep land prices down, thus preserving the Isle of Man as a property-owning democracy and to provide leased land for low-income housing.
>
> He advised all countries to *retain the ownership of beaches as a national asset.*
>
> A delegate from the Falkland Islands told the conference that a dispute over land policy had led to the dissolution of the South Atlantic dependency's Legislative Council in June.
>
> It had been proposed that development grants should be paid not just to resident land owners, who tended to increase the land's productivity, but also to absentee owners who did not. The conflict between nationalism and the desire to attract foreign investors split the Council and caused some Members to resign. The Council was therefore rendered inoperative and the Executive Council had been running the government until planned elections could be held on 11 October, he said. [Emphasis added.]

The comments expressed in this report are of particular interest when balanced with the concerns expressed in other Canadian jurisdictions where geographical areas are so much larger.

[A number of other land issues and the proposed or implemented measures to address these can be identified in the text of Appendix C, where most of the focus is on specific American jurisdictions.]

APPENDIX E

Report on Recent Legal Disputes Involving Farming Practices

[This report was prepared as background information for the Commissioners in conjunction with the proposal to institute "right to farm" legislation as one aspect of land use policy in the province. Discussion on this issue is found in the chapter entitled "Rural vs. Urban"].

From a chronological perspective, the first of these "farming" cases began in 1977. Strictly speaking, *O'Regan and O'Regan v. Bresson, O'Regan & O'Regan* (1977), 23 N.S.R. 587 (N.S. Co. Ct.) did not involve a farm, as the dispute centered on race horses, stabled near the Town of Glace Bay, but the decision will strike a responsive chord, albeit perhaps a controversial one for Islanders.

The plaintiffs (complaining parties who began the legal action) were a father and his minor-aged son, while the defendants were three of their relatives, all living in the same neighbourhood that, in the words of the trial judge, was "an area which is currently feeling the pressure of urban expansion". (at p. 589.) Most of the area was actively farmed until 1961 by the father of one defendant. In 1970 this defendant erected a barn for horses; the plaintiff built his house across the street from this barn two years later. Other barns and a private racetrack were already nearby. Accordingly, the judge noted "the location of the plaintiffs' dwelling either was or is surrounded on all sides by barns at one time used for the stabling of animals, mostly horses." (at p. 590) Consistent with the view put forward in other nuisance cases, however, he ruled that who was there first is of no consequence to the outcome of the legal dispute. In the words of McLellan, C.C.J., at p. 590:

> However, it is convenient to now dispose of the suggestion that the plaintiff came to the nuisance, if such matters as he complains about are found to be a nuisance, for the law is clear that *if a man purchases property in respect of which a nuisance is being committed it is still actionable by him, for it is a nuisance of which he can legally complain.* [Emphasis added.]

A second important point with respect to the law of nuisance was made in regards to the complaint of the infant plaintiff, who had an asthmatic condition and who alleged that contact with horse dander (dandruff) and horse hair aggravated his allergic condition. The trial judge accepted the principle of law to the effect that nuisance law does not take into account the abnormal sensitivities of either a person or a property. "An interference with something of abnormal sensitiveness does not of itself constitute nuisance", he wrote, citing the words of Clerk and Lindsell on Torts. Consequently, he found, at p. 593:

> The mere fact that they stabled and tended the horses across the street from the infant plaintiff's residence, thereby causing him to suffer as a result of an unusual allergy to horse danders and horse hair does not create liability to nuisance. I dismiss the infant plaintiff's claim against all the defendants.

Other claims, however, were not dismissed so easily and, to deal with them, it was necessary to examine all the facts of the situation and the complaints being raised to determine which, if any, of the complaints, constituted actionable nuisance. While an unspecified number of horses were stabled in a number of barns, the trial judge found that one barn in particular "was the focal point of the plaintiff's complaints". This was the barn across the street from the plaintiff's residence; for three years it had housed five race horses and for a fourth year one horse was stabled there. Then, after the lawsuit had been launched, the barn was moved so that it was 375 feet away from the plaintiff's residence.

The complaints raised in the lawsuit were enumerated by the trial judge in this portion of his decision, at pp. 591 - 2:

> Turning next to the plaintiff's complaints, it was admitted by the adult plaintiff that he had grown up in the area in his father's home adjacent to the lot on which he had built his own residence, and that he had no complaints about any of the defendants' activities while they were stabling horses owned by them in barns #2 and #4. However, when horses owned by others began to be stabled in barn #4 or perhaps when the number of horses in this barn increased to five, his attitude changed. He and his wife testified that they were bothered by the noise caused by the coming and going of the trucks hauling the horses to and from race tracks (frequently late at night), by the noise made by the horses themselves, whinnying to each other and kicking their stalls, by the defendants washing the horses on the street in front of the adult plaintiff's residence, by horse urine running in the street, by the flies and rats attracted to the area by the manure piles and feed in the barns, by the stench of burning straw and from the manure stockpiled adjacent to the barns and on the Joseph O'Regan garden plots, by the constant passing of horses and jogging carts going to and returning from the race track, and by the affect that the proximity of the horses had on the health of the infant plaintiff.

In examining these complaints, the trial judge took note of existing municipal and provincial regulations and found that the defendants were in conformity with all of these laws. The discussion on this point, found at p. 593 of the judgement, was to this effect:

> Before turning to the question of whether the adult plaintiff's claim is sustainable against the defendants or any of them, I desire to dispose of two matters which were fully canvassed at the trial. The first deals with the municipal zoning by-laws affecting the area in question. It was proved that this part of Glace Bay was zoned R 1 in 1976. Stabling of horses as carried on by the defendants is not permitted in such a zone. However, by s. 45 of *The Planning Act* (c. 16, S.N.S. 1969) buildings "lawfully in existence" at the time of the publication of notice of intention to pass a restrictive by-law "may continue to exist". This section appears in Part VIII bearing the title "NonConforming Uses". It has not been proved to my satisfaction that the barns in question were not lawfully in existence in 1976 (although Barn # 4 apparently encroached on both Hartley and Bond Streets) and so there has not been any violation of this by-law. I acknowledge, however, the plaintiff's allegation that the purpose of introducing the by-law was to show the current planning for this area - i.e., that future development would be towards residential use.

> The second matter deals with alleged violations of *The Public Health Act* by the defendants. A number of complaints were made by William O'Regan to the town council of Glace Bay about the conditions outlined above and complained about by the plaintiff and his wife. A corresponding number of inspections were made by the inspectors under the *Public Health Act*. There were no prosecutions - indeed, several of the inspectors were called by the defendants and all testified that they found no violations of the Act. It must be borne in mind that they were concerned under the Act only with public nuisances and their passing upon the conditions they found did not take into account the possible existence of a private nuisance. However, the general tenor of their evidence was that all the barns were clean and well-kept, feed was stored in metal containers, there were no rat holes visible; the only suggestion was that there was on one occasion an undue accumulation of manure which was immediately remedied by Francis Bresson. One report noted no undue odour from either barn # 4 or barn # 2. Somewhat significantly, one report concluded with the writer's opinion that the complaints being received by the municipal authorities were as a result of a personal feud between neighbours. Exhibit D/13 consisted of seven reports, all of which were favourable to the defendants from the public health standpoint. *I think this evidence is largely irrelevant because it was directed towards public health and public nuisances, but it does establish that each of the defendants maintained standards of operation well above the minimum from a public health standpoint.* As set forth in the defendants' memorandum after trial, from this evidence and these reports "the court has clear and unbiased evidence as to the state of repair, cleanliness (and) upkeep" of the barns of the defendants. Having said that, I confess that I am not altogether free of the suspicion that *the defendants adopted the public health standards as the standards they had to meet to avoid difficulties with the law and that they ignored the possibility that their actions might amount to a private nuisance.* [Emphasis added.]

Compliance with zoning bylaws is no defense to a nuisance action nor is there any immunity offered to a plaintiff because public standards under the general regulatory provisions relating to the particular nuisance have been met.

The dispute in the *O'Regan* case involved the law with respect to "private nuisance", not "public nuisance". While McLellan, C.C.J. did not spell out the difference between the two, the distinction was made in the *Breau* case (referred to below) and it is useful at this point to make mention of the differentiation, which was explained in *Breau et al. v. Soucy and Cyr* (1983), 52 N.B.R. (2d) 44 (N.B.C.A.) at p. 54 in these words:

> The distinction between a private nuisance and a public nuisance is set out in *The Canadian Encyclopedic Digest* (Ontario) (3d) as follows at pages 102 and 109:
>
> > A public nuisance is distinguished from a private nuisance in that, while the latter arises in cases where there has been an interference in the use and enjoyment of land or in rights appurtenant to land, the former is an interference with rights enjoyed by all members of the community or by a recognizable class thereof and is a criminal offence. A public nuisance must affect the welfare of the community, while a private nuisance must specifically affect the welfare of an individual. *In respect of public nuisance, a member of the public has no personal cause of action unless he has suffered special or particular damage.* [Emphasis added by N.B.C.A.]

It was the law with respect to private nuisance that was involved in the *O'Regan* dispute and McLellan, C.C.J. reviewed the principles by referring to earlier authorities in this passage at pp. 595 - 6:

> Turning then to the law respecting private nuisance, the following excerpt from Street, "The Law of Torts" (5th Ed.), p. 215, was quoted with approval by Jones, J. in *Smith v. Richardson* (1977), 23 N.S.R.(2d) 407; 32 A.P.R. 407:
>
> > A person, then, may be said to have committed the tort of private nuisance when he is held to be responsible for an act indirectly causing physical injury to land or substantially interfering with the use or enjoyment of land or of an interest in land, where in the light of all the surrounding circumstances, this injury or interference is held to be unreasonable.
>
> Some further insight into the extent of the interference with the plaintiff's enjoyment of his property before a private nuisance can be found to exist, and the lawful limits of that interference can be gleaned from the following quotation from *Clerk and Lindsell on Torts* (supra) at pp. 784 and 785:
>
> > In nuisance of the third kind, 'the personal inconvenience and interference with one's enjoyment, one's quiet, one's personal freedom, anything that discomposes or injuriously affects the senses or the nerves', there is no absolute standard to be applied. It is always a question of degree whether the interference with comfort or convenience is sufficiently serious to constitute a nuisance. The acts complained of as constituting the nuisance, such as noise, smells or vibration, will usually be lawful acts which only become wrongful from the circumstances under which they are performed, such as the time, place, extent or the manner of performance. In organised society everyone must put up with a certain amount of discomfort and annoyance from the legitimate activities of his neighbours, and in attempting to fix the standard of tolerance the vague maxim *sic utere tuo, ut alienum non laedas* has been constantly invoked. As has been pointed out, "the homely phrases 'Give and take', 'Live and let live' are much nearer the truth than the Latin maxim". *In determining the question whether a nuisance has been caused, a just balance must be struck between the right of the defendant to use his property for his own lawful enjoyment and the right of the plaintiff to the undisturbed enjoyment of his property. No precise or universal formula is possible, but a useful test is what is reasonable according to ordinary usages of mankind living in a particular society. 'Whether such an act does constitute a nuisance must be determined not merely by the abstract consideration of the act itself, but by reference to all the circumstances of the particular case, including, for example, the time of the commission of the act complained of; the place of its commission; the manner of committing it, that is, whether it is done wantonly or in the reasonable exercise of rights; and the effect of its commission, that is, whether those effects are transitory or permanent, occasional or continuous; so that the question of nuisance or no nuisance is one of fact'.* [Emphasis added.]

After stating these various principles of law, the judge then reverted to the fact situation and found some of the complaints did amount to nuisance and some did not. His reasoning, at pp. 596 - 7, is instructive on the application of these principles to a particular fact situation:

> I have found it very difficult to reach a conclusion on the question of whether or not the plaintiffs ought to succeed because *the matter is so much a matter of degree, but my ambivalence does not extend to all the things complained of.* For instance, I do not consider the use by the defendants of the race track on Francis Bresson's property for the exercise and training of race horses even approaches a legal nuisance. The evidence was that the jogging carts or sulkies caused dust to rise from the unpaved Hartley Street as Arthur O'Regan (and perhaps others) went to and from the track. ... I do not consider that there was anything the slightest bit unreasonable in such actions. He had only one race horse stabled in barn #3 and the extent of his passing and re-passing in front of the plaintiff's house was not unusual. So also with the spreading of manure on the garden plots tilled by Joseph O'Regan. Although the plaintiff's counsel invited me to find malice on the part of Joseph O'Regan in the quantity of manure stockpiled and spread by him on plot #5, I do not so regard the evidence. It is true that manure was brought to the area from barn #4, but there is no evidence that an unusually large quantity was involved. Use of manure as a fertilizer is a common practice, and I do not find it unusual or unreasonable as it was used by Joseph O'Regan. Nor does the evidence satisfy me that the plaintiffs can claim a nuisance because of rats attracted to the area by the barns. One or two such rodents may have been seen in the area, but not an excessive number. The public health inspectors' reports and evidence satisfy me that the defendants have taken adequate precautions against rats, which have been effective. Much was made by William O'Regan and his wife (particularly the latter) of the noxious odours caused by burning manure. According to my notes Francis Bresson burned manure or straw four times in 1974 and 1975, and Joseph O'Regan burned twice only during the relevant years. Although unpleasant I think the complaints on this score were exaggerated and are part of the "Give and take" referred to in the quotation from *Clerk and Lindsell* above.
>
> There remain, however, the plaintiff's complaints about the noise associated with the return of the race horses to barn #4 late at night after races, the noise made by the horses in their stalls at other times, the accumulation of horse manure on the street by barn #4 and finally the washing and grooming of the horses a mere fifty-seven feet from the plaintiff's residence. I think *what tips the scales in favour of the plaintiffs is the number of horses stabled in barn #4. The defendants brought horses owned by other persons to this barn and these added to the horses owned by the defendants Bresson and Joseph O'Regan greatly increased the dimensions of the matters complained of by the plaintiffs.* It seems to me that the defendants acted unreasonably in subjecting the plaintiffs to such an increase in the objectionable factors associated with the keeping of horses in such an area. In the view I have finally adopted, this amounts to private nuisance and the plaintiffs are entitled to judgment. [Emphasis added.]

Finally, the trial judge considered the remedy that he was prepared to grant, in a passage at pp. 597 - 8:

> As to damages: no proof of damage is required where the nuisance consists of "the personal inconvenience and interference with one's enjoyment, one's quiet, one's personal freedom, anything that discomposes or injuriously affects the senses or the nerves" (per Lord Westbury in *St. Helens Smelting Co. v. Tipping* (1865), 11 H.L.C. 642, at 650); "no actual financial or physical damage need to proved. ...The damage in such a case

> consists in the annoyance and discomfort caused to the occupier of the premises" (*Clerk and Lindsell on Torts (supra)* p. 790). In the view I take of the matters complained of no claim for substantial damages has been made out. Somewhat significantly no resident of the immediate area was called in support of the plaintiffs' case. The town clerk testified that his office had never received any complaints from the residents of the area except those made by the plaintiff William O'Regan. I fix the adult plaintiff's damages at $500.00.
>
> I see no reason to grant an injunction as requested in the statement of claim. The focal point of this case was barn # 4 when it was located at the corner of Hartley and Bond Streets. It has now been removed to a point 375' away from the plaintiff's dwelling, as I have indicated. I cannot see that there now exists any nuisance or that one is likely to be caused in the future by the normal use of the defendants' properties. There is nothing to be enjoined. I refuse the claim for an injunction.

In addition to awarding $500 in damages, the trial judge allowed the sum of $350 by way of "costs", which would be applied to reduce the plaintiff's legal fees in conjunction with the case.

The remaining nuisance actions that have been identified apply more directly to the farming situation; these are a trio of Maritime decisions all involving piggeries.

The earliest of these resulted in three judicial decisions, illustrating both a fact situation of potential consequence in Prince Edward Island and some procedural intricacies involved in a nuisance action. (This case is known formally as *Breau et al. v. Soucy & Cyr* (1983), 52 N.B.R. (2d) 44, 27 C.C.L.T. 168, 137 A.P.R. 44 (*sub nom. Breau v. Soucy*) (C.A.) reversing (1982), 41 N.B.R. (2d) 8, 107 A.P.R. 8 (*sub nom. Breau v. Soucy* (no. 1)) (Q.B.), as modified by *Breau v. Soucy* (no. 2), 41 N.B.R. (2d) 20 (C.A.).)

The dispute in this case began when 9 of approximately 75 cottage owners in a vacation area near Edmunston, New Brunswick, brought a nuisance action against the defendant pig farmer, asking for an injunction and damages, because the farm odours made it unpleasant for the cottage owners to be outdoors and the farm refuse was contaminating the lake. The defendants denied liability on grounds they complied with government regulations respecting manure and waste management. The trial judge held that the defendants could not rely on the defence of legislative authority because the legislation did not authorize the creation of a nuisance. He concluded that the defendants had caused "intolerable and dreadful pollution" by allowing "a build-up of algae and slimy substances" in Lake Unic as well as by emitting a "stench which ... can make you ill within a minute". This situation was the result of the operation of a pig farm on a site close by the lake. For a remedy, he awarded each of the defendants nominal damages in the amount of $1.00 and, in the decision he rendered on May 13, 1982, a detailed program of injunctive relief.

The parties appeared before Mr. Justice La Forest of the New Brunswick Court of Appeal a few weeks later at the behest of the defendant, seeking a stay of proceedings in relation to part of the injunction and His Lordship, (in Breau v. Soucy (No. 2), 41 N.B.R. (2d) 20 (C.A.) at p. 22) detailed the terms of the original injunction:

(a) The retaining pond located behind the pig sties shall be completely drained before June 1, 1982;

(b) The retaining pond shall not be used again until such time as it has been reinforced to prevent leakage in accordance with the standards established by the Department of Health and so certified by a firm of consulting engineers selected jointly by the plaintiffs and the Department of Health;

(c) By the end of May 1982, the defendants shall cease to emit pollutants and pungent or unpleasant odours into the air insofar as they may be detected in an area more than 300 feet from the emission site;

(d) The defendants shall no longer dump liquid or solid pig manure or other refuse on land which may drain on Lake Unic; and

(e) The defendants shall no longer leave dead animals or other decomposable substances in open areas near their pigsties.

During this hearing, the defendants indicated that even though an appeal was pending they were proceeding to make a number of changes to comply with the injunction order. "According to them, however, it is impossible to comply with the order set out in paragraph (a) by the date specified (which has already passed) as a result of which they seek until July 30, 1982 to drain the retaining pond. Furthermore, they request that the portion of the order embodied in paragraph (c) dealing with the emission of polluted area be suspended until such time as the Court of Appeal has ruled on the appeal. They state that they can prevent the emission of odours from the retaining pond, which will substantially improve the situation, but they admit that they are unable to comply with this order in its entirety." (41 N.B.R. (2d) 20 (C.A.) at pp. 22 - 23.). The dilemma that faced Mr. Justice La Forest was outlined at p. 25 in these terms:

> I must still consider the relative magnitude of the prejudice which will accrue to the defendants if the orders are maintained and that suffered by the plaintiffs if they [are] stayed. It is not earnestly disputed that the suspension of the defendants' activities until the appeal is decided will cause them irrevocable loss, even if they are successful on appeal. *The defendants contend that they would be required to dispose of their swine in order to comply strictly with the judge's orders.* Approximately twelve months would be required to replace the herd. *The immediate losses of the defendants are likely to result in personal bankruptcy.*
>
> *On the other hand, a stay of the orders would deprive the plaintiffs of the enjoyment of their properties this summer. They would, however, suffer this loss even if the orders were maintained in force as 4,000 pigs cannot be disposed of at the drop of a hat.* [Emphasis added.]

To resolve the matter, His Lordship found the interests of justice would be best served by staying the orders made by the trial judge, with certain conditions attached. Most notably, these required the defendants to continue with their alterations, suggested an early hearing on the appeal, and allowed the plaintiff to apply to reinstate the injunction if the defendant failed to comply with the conditions.

Mr. Justice La Forest's discretionary moves proved to be judicious steps, for the defendants were able to have the injunction lifted when the New Brunswick Court of Appeal heard the matter. The victory, however, did not spring from any new principles of law with respect to nuisance. Instead, it was based on a section of statute law which required the consent of the Attorney-General before applying for an injunction "which, if granted would delay or prevent the construction or operation of any manufacturing or industrial plant on the ground that the discharge from such plant is injurious to some other interest". (52 N.B.R. (2d) 44 at p. 48.) This consent had not been obtained.

Before finding that the consent was necessary in the circumstances of ***Breau v. Soucy***, the New Brunswick Court of Appeal found "that New Brunswick is the only Canadian province to impose such a restraint upon its citizens. In fact, ... such a restraint does not exist anywhere else in Canada." (52 N.B.R. (2d) 44 at p. 51.) The Court also asked "whether or not a pig farm can be included in the definition of... (industrial plant) and if the reply is in the affirmative, whether or not the appellant's pig farm is included". (52 N.B.R. (2d) 44 at p. 48.) After reviewing various definitions for the word "industrial", the Court concluded: "In light of these definitions, there cannot be any serious doubt that pig raising, on such a scale as the appellant's business, is an integral part of the agricultural and food industry and is, within the meaning of s. 33, an industrial plant." (52 N.B.R. (2d) 44 at p. 49.) Accordingly, the Court of Appeal was prepared to quash the part of the trial judge's decision that granted an injunction.

The Court of Appeal made brief reference to the adverse financial consequences for the defendants/appellants in this matter, for it was argued that the forced sale of the pigs would mean an immediate loss of over $60,000 and would preclude payment to long-term creditors, thereby necessitating personal bankruptcy. But the Court of Appeal, at p. 58, concluded this discussion with these words:

> Insofar as it is regrettable that it be this way, these allegations are not relevant to the resolution of the issues before this court. *The right to a clean and healthy environment cannot give way to financial interests in a society conscious of each individual's interests. Furthermore, the time to consider this aspect of the issue was before the construction of the pig farm when it was known that this lake was a holiday resort which already had about seventy-five cottages. These allegations therefore do not constitute a ground of defence recognized in law.* [Emphasis added.]

Faced, then, with a situation where the injunctive remedy had to be quashed, the Court of Appeal felt it unfair to allow the award for nominal damages to stand and amended the amount of damages to the sum of $2,000 to each of the nine plaintiffs, as well as awarding each of them their costs and disbursements resulting from all legal actions on a solicitor-client basis. (The awarding of costs on this scale---rather than the more common practice of using the party-and-party schedule to determine what apportionment of legal costs must be assigned to one side of the litigation---is suggestive that the Court lacked sympathy for the piggery owners who, on the facts of the case, seemed very much the authors of their own misfortune in locating a swine operation of this magnitude in the proximity of a recreational/residential area.)

In addition, the Court of Appeal referred at p. 59, to one of the principles of nuisance law, as enunciated in Halsbury's ***Laws of England***:

> *Continuing nuisances.* A continuing nuisance is one in which the wrongful act or omission is repeated or continues. In such cases there is a new nuisance each day, and the cause of action continues de die in diem [from day to day]. The recovery of damages for the creation of the nuisance does not amount to a grant of a licence to continue it, and subsequent actions may be brought for the continuance, and substantial damages may be awarded in them, *and, although in the original action nominal damages might suffice, the measure of damages in subsequent actions may be the amount which the jury think sufficient to compel the defendant to abate the nuisance.* [Emphasis added.]

No doubt this further reflection on the principles of nuisance law by the Court of Appeal was intended to warn the defendants that the Court's quashing of the injunction did not give the defendants immunity from future legal action if the problems with odours were not dealt with by the owners of the piggery.

Another case involving a New Brunswick piggery was launched soon after the Court of Appeal rendered its verdict in *Breau v. Soucy*. This was the case of *Desrosiers v. Sullivan* (formally known as *Desrosiers et al. v. Sullivan and Sullivan Farms Ltd.* (1985), 66 N.B.R. (2d) 243, 169 A.P.R. 243 (N.B.Q.B.) Affirmed (1986), 40 C.C.L.T. 66, 76 N.B.R. (2d) 271, 192 A.P.R. 271 (N.B.C.A). Leave to appeal to S.C.C. refused (1987), 40 C.C.L.T. 66 (note), 79 N.B.R. (2d) 90, 201 A.P.R. 90 (note), 80 N.R. 315 (note) (*sub nom. Sullivan & Sullivan Farms Ltd. v. Desrosiers*) (S.C.C.)).

Once again, the dispute involved a fact situation that was both critical to the determination of the legal dispute and typical of one kind of land use scenario in the Province of Prince Edward Island. Mr. Justice Stevenson, the trial judge in the *Desrosiers* case recounted the events that led the parties to the Court of Queen's Bench at Campbellton, New Brunswick, in his decision in (1985), 66 N.B.R. (2d) 234, at pp. 244 - 6:

> The twenty-five plaintiffs brought this action claiming an injunction and damages in respect of an alleged nuisance created by the defendants' operation of a piggery on a farm on the Mountain Brook Road in the Village of Charlo. ...
>
> Of the remaining twenty-two plaintiffs, fifteen live in homes and two in mobile homes that have been built or placed in the area since 1974. Five plaintiffs live in older homes. Several of those who own the newer homes are nevertheless natives of the area.
>
> The area was at one time strictly rural and mixed farming was the principal activity. In recent years mixed farming has declined, many building lots have been sold and bought, and homes have been built. The area has become more or less a bedroom community for people who work in and near the Town of Dalhousie.
>
> In 1974 the defendant, Terrance Sullivan, bought a farm property. He began farming in 1975. At first he had a few head of beef cattle and a small number of pigs. By 1977 he had decided to concentrate on swine and erected a new barn. In 1978 he increased the number of sows to 40. In 1980 he incorporated the defendant Sullivan Farms Ltd. and built a larger barn to accommodate 140 sows and 1,000 feeder hogs. He established a lagoon to handle the increased quantity of liquid manure from the larger operation. Although residents of the area had before 1981 noticed odours from the farm that were offensive but tolerable, in that year the

> odours from the farm, and specifically from the manure lagoon, became a serious matter. The pigs were producing about 260 cu. ft. of liquid manure per day. The anaerobic decomposition of the increased volume of manure created a greater volume of gases one of the properties of which is an offensive odour. There was some aggravation of the situation from failure to channel all of the manure into the lagoon beneath its surface. The large barn burned on June 15, 1984 with a loss of 1,214 animals. The odour from the lagoon persisted and was only eliminated in July of 1985 after the lagoon had been pumped out and completely covered over with fill. The defendants have built a new barn and lagoon a mile distant on their property but have not resumed full operation pending, I assume, the outcome of this action.

During the three or four years that the defendant operated the piggery on a large scale, the neighbourhood suffered from the smell and the various ways in which this odour problem impinged on residential lifestyles became the next consideration for the trial judge. At pp. 246 - 7, he reviewed the evidence presented at trial in this regard:

> Not everyone has the same sensitivity to odours and several witnesses called by the defendants were not offended by the odours from the defendants' farm. The long parade of witnesses called by the plaintiffs however voiced a long litany of complaints which I will summarize.
>
> Children refused to play outdoors because, they said, "it stinks out there". Older children would not stay at home. Residents could not dry and air their laundry on clothes lines. If laundry was exposed to the odour it had to be washed over again. Residents had to buy electric clothes dryers. They could not have outdoor barbecues, eat outdoors, use their verandahs or pursue normal outdoor recreational activities. Friends would cut their visits short or refuse to visit at all. Social activities had to be moved to other locations. Windows could not be opened and airconditioners were no help. The pervasive odour interfered with sleep and with the relaxation and relief from stress of the work-place that people seek in their homes. Some suffered from nausea. The odour itself caused mental stress. The community was in such a state of siege by smell that one plaintiff who has now moved elsewhere said "All the people talked about was the smell". Individual dispositions and intra-family relationships were affected. Another witness said "It's no way to live at all."
>
> The offensive odour was not continuous. It was worse in summer than in winter, when the wind blew from the farm toward particular plaintiffs than when it did not, and when certain climatic conditions existed than when they did not.

On the basis of this evidence, Stevenson J. was prepared to find the piggery operation constituted a nuisance. *"The plaintiffs have established by an overwhelming preponderance of evidence that the odours were so offensive as to constitute an intolerable nuisance in the sense that it interfered with the plaintiffs' reasonable enjoyment of their properties"*, he stated, at p. 247. [Emphasis added.] "In reaching this conclusion, I have, ...made every allowance for hypersensitivity and exaggeration on the part of the plaintiffs". This conclusion was reinforced by the steps taken by the plaintiffs before the matter was brought before the courts. "Residents of the community complained to the Village Council and to the Provincial Departments of Agriculture, Environment and Health. All recognized that a problem existed and sought ways to alleviate it. A peaceful protest parade was organized in 1983." (66 N.B.R. (2d) 234 at p. 247.)

Before disposing of this matter, Stevenson J. considered issues that had been raised on behalf of the piggery owner. At pp. 247 - 9, he stated:

> The defendants plead that they have complied with all building and zoning requirements and that they hold certificates of compliance issued by the Department of Agriculture and have met all requirements of the Department of the Environment.
>
> There are, it seems, no building or zoning regulations in the area. It is within the territorial limits of the Village of Charlo. Mayor Morris testified that the Village does not have a zoning bylaw and that a community plan is in preparation. Mr. Gilchrist of the Department of Agriculture, in a report prepared in 1983, said that Mountain Brook was a designated Green Belt which permits an agricultural or forestry use as well as single family construction. He also said that the Village had in 1982 adopted a municipal plan which had been prepared in 1978. At the trial Mr. Gilchrist testified that Mountain Brook is designated as an agricultural area but he did not say, nor was he asked, by whom such designation was made.
>
> In the face of the Mayor's evidence and in the absence of formal proof of the adoption by either municipal or provincial authorities of any planning or land use bylaws or regulations I must assume that there were none in effect. In his report Mr. Gilchrist said, *"If one builds in an area with no zoning, anything can happen." But the character of a neighbourhood is not solely dependent on formal laws or regulations. It also depends on geography, actual land use, and environmental factors.* While the Mountain Brook area may once have been strictly rural it has taken on a definite suburban character during the last twelve years. There can be no argument in this case about the plaintiffs having "come to the nuisance". *The area had taken on its new character when the defendants began enlarging their operations.*
>
> *The defendants were issued so-called certificates of compliance by the Department of Agriculture* in 1977 and in 1980. The certificates were not offered in evidence. According to Mr. Gilchrist *such certificates are not required before a farm operation can be carried on. That is, they have no legal status.* They are, however, issued to farmers who apply for them and who are operating in compliance with regulations, recommendations and guidelines of the Departments of Health, Agriculture and Environment for the handling and management of manure and waste. No copies of any regulations, recommendations or guidelines have been put before me. Different witnesses referred to a guideline rule that no facility should be within 300 ft. of any buildings occupied by anyone other than the farmer himself.
>
> Neither witnesses nor counsel referred me to any applicable regulations. I have found, however, that s. 284 of Regulation 84-283 under the Health Act, R.S.N.B. 1973, c. H-2, now says that no pigsty, hog-raising establishment, abattoir, poultry house or other livestock operation shall be built within 90 m of any inhabited house or occupied dwelling, other than that of the owner. I do not know if there was a predecessor regulation to the same effect. The regulation corresponds to the guideline referred to at the trial. *The strikingly unrealistic feature of the regulation is that it prescribes a uniform minimum distance of 90 m whether the farmer is keeping one animal or a herd of several hundred.*

> In any event *compliance with rules and regulations contained in or authorized by legislation does not relieve one from the common law rule that he must conduct his activities in such a way as not to create a nuisance* in the sense I have earlier mentioned. [Emphasis added.]

Mr. Justice Stevenson then grappled with what remedy or remedies he was able to provide. Because the piggery had burned, he found that "the nuisance has now ceased. At the moment there is nothing to restrain. In that circumstance no injunction can be granted." (66 N.B.R. (2d) 234 at p. 249.)

However, he went on to make it clear that an injunction would have resulted had the fire loss not intervened, for he added (66 N.B.R., (2d) 234 at p. 250.):

> If conditions had continued as they existed prior to the fire in June 1984 I would have had no alternative but to grant an injunction ... to restrain the carrying on of the business of farming so as or in such manner as by the discharge of noxious or offensive vapours or smells or otherwise to create a nuisance or injury to the plaintiffs or any of them or to their properties. If the defendants' new operation results in creation of a nuisance they may be faced with a request for such an injunction in another lawsuit.

Even though an injunction was not a remedy in the circumstances before him, this did not preclude Mr. Justice Stevenson from granting damages to the plaintiffs. While he had little difficulty in providing this as a remedy, the amount of the award was no easy matter and the trial judge pondered this issue in a passage at pp. 250 - 251:

> The plaintiffs also claim damages although their main concern has been to establish the fact that the defendants did commit a nuisance and to prevent it recurring. The assessment of damages for such a tort is difficult. In *Buckley on the Law on Nuisance* (1981) at pp. 115 - 116 the author quotes from the judgment of Stephenson, J.[illegible], in *Bone v. Seale, supra*:
>
>> "It is difficult to find an analogy to damages for interference with the enjoyment of property.... The nearest analogy would seem to be the damages which are awarded almost daily for loss [sic] of amenity in personal injury cases; it does seem to me that there is perhaps a closer analogy than at first sight appears between losing the enjoyment of your property as a result of some interference by smell or by noise caused by a next door neighbour, and losing an amenity as a result of personal injury. Is it possible to equate loss of sense of smell as a result of the negligence of a defendant motor driver with having to put up with positive smells as a result of a nuisance created by a negligent neighbour? There is, as it seems to me, some parallel between the loss of amenity which is caused by personal injury and the loss of amenity which is caused by a nuisance of this kind.."
>
> As the plaintiff, Mary Lou Audet, said at the trial "There is no price for four years of normal living."
>
> It was argued that excessive damages could be ruinous to the defendants. *A damage award is not a penalty and must not exceed the extent of the interference to the neighbours. . . .* On the other hand, *economic considerations are not a shield for the commission of tortious acts with impunity.*

> No special damages have been proved. The plaintiffs alleged devaluation of property values and that the inconveniences have "completely killed the market for the sale of homes in the area". Several property owners successfully appealed the assessed values of their properties for tax purposes and the existence of the odours was a factor taken into consideration by the assessment authorities in reducing assessments. There is no direct evidence that the market has been destroyed. As the nuisance has been abated I cannot find that there has been any permanent effect on property values. A prospective purchaser might well be apprehensive about the defendants' future operations but only time will tell whether such apprehension would be justified. I cannot assess any damages based on speculation about that. [Emphasis added.]

Ultimately he awarded damages in the amount of $1,500 to each of the plaintiffs who had lived in the area throughout the period 1981 to 1985 and lesser amounts to the plaintiffs who lived there only part of that time without giving reasons for this choice of quantum. Costs in the amount of $3,375 (plus disbursements) were also awarded, bringing the total financial cost to the defendants to more than $35,000 (which would be in addition to legal fees incurred by the defendants in retaining counsel to defend the lawsuit.)

This decision no doubt was viewed with alarm by the farming community, particularly when it was upheld on appeal to the New Brunswick Court of Appeal, which found there was ample evidence to support the trial judge's conclusion that a nuisance had been caused, and when the Supreme Court of Canada denied leave to appeal. Equally chilling for members of the farming community may have been the decision by the Court of Appeal to uphold the trial judge in his imposition of liability on both the farmer in his personal capacity and the corporation he owned and controlled. The message delivered by the Court of Appeal in 76 N.B.R. (2d) 271 at pp. 277 - 8 was emphatic:

> The question here is whether Mr. Sullivan, who was the manager and principal employee of the company that committed the nuisance, may be responsible along with the company. I see no reason why, because of his involvement in creating and maintaining the nuisance, Mr. Sullivan should not also be responsible. Here, as the trial judge found, Mr. Sullivan was the principal employee of the company and the person responsible for its day-to-day operations and on that basis he was responsible for both creating and maintaining the nuisance. In addition he caused the company to be formed. It then took over the operation, albeit on a larger scale, which eventually caused the nuisance. As pointed out above, nuisance is often a continuing situation and may involve many people, both managers and employees, in its creation and maintenance. In such cases their liability might become more difficult to ascertain than here where it was Mr. Sullivan's continuing actions, although done on behalf of the company, which caused the nuisance.
>
> Nor am I attracted to the submission that Mr. Sullivan is protected by reason of the rule in *Salomon v. Salomon & Co.*, [1897] A.C. 22. The question here, as I have pointed out, is not whether Mr. Sullivan was acting on behalf of or even if he "was" the company, but whether a legal barrier, here a company, can be erected between a person found to be a wrongdoer and an injured party thereby relieving the wrongdoer of his liability. In my opinion, once it is determined that a person breaches a duty owed to neighbouring landowners not to interfere with their reasonable enjoyment of their property, liability may be imposed on him and he may not escape by saying that as well as being a wrongdoer he is also a company manager or employee.

An attempt to have the case argued before the Supreme Court of Canada was made subsequently but leave to appeal was denied by that Court. This denial also does not constitute an endorsement by the Supreme Court for the principles of law stated and applied by the Court of Appeal or the trial judge. Nonetheless, the refusal to hear the case by the Supreme Court of Canada is, arguably, suggestive that the lower courts acted properly in their disposition of this dispute.

Less than two weeks prior to the New Brunswick Court of Appeal decision in the *Desrosiers v. Sullivan* case, the Nova Scotia Court of Appeal was pronouncing its decision on a lawsuit for nuisance involving a piggery near Lunenburg. While the outcome was different, the result was of little comfort to concerned farmers. This was the case of *Fogarty and Crouse v. Daurie* (1986), 77 N.S.R. (2d) 34, 177 A.P.R. 34, 40 C.C.L.T. 48 (N.S.C.A.), reversing (1986), 71 N.S.R. (2d) 282, 171 A.P.R. 282 (N.S.T.D.). The facts in the *Fogarty* case presented an even more compelling challenge to the traditional family farm.

The trial judge, Mr. Justice Tidman, outlined the events that led to the legal action, in (1986), 71 N.S.R. (2d) 282 at pp. 283 - 4:

> The defendant, Vance Lowell Daurie, owns a farm property in Front Centre which he purchased in 1981 from his father, Lowell Daurie. The farm consists of 50 acres of land and the defendant leases approximately 30 additional acres for use in the farm operation. The land is situate on both sides of the Front Centre highway. Part of his property consists of a field located directly adjacent to the northwest sideline of the Fogarty property and directly across the highway from the Crouse property. The Fogarty residence is situate approximately 50 feet from the southeastern sideline of the field and the Crouse residence is situate approximately 50 feet from the front boundary of the field. The defendant's farm property also abuts the rear sideline of and extends out behind the Crouse property. The Crouses lived in their property from 1964 until its sale shortly before this trial. The Fogartys built their residence in 1971 and have lived there since that time.
>
> Lowell Daurie purchased the property now owned by the defendant in 1954 from Mrs. Maurice Crouse, a widow whose husband had operated a dairy farm on the property. Lowell Daurie worked as a welder as well as operating a mixed farm on the property. At one time he kept as many as 27 head of cattle, 50 pigs and 24 hens. He carried on a small dairy cattle operation initially [sic] but switched to beef cattle when regulations regarding the sale of raw milk and cream became more stringent. The defendant helped his father with the farm operation until 1976 when he left Nova Scotia. Thereafter Lowell Daurie scaled down his farm operation to a point that in 1978 he had only 1 sow and a few head of cattle.
>
> The defendant grew up on the farm property of Lowell Daurie. . . . In 1976 he married and went to British Columbia, where he worked as a marine electrician for 2 1/2 years and then returned to Nova Scotia. On his return to Nova Scotia in 1978 he and his wife took up residence with his father and the defendant worked as a marine electrician with National Sea Products and he is now employed on a full-time basis.
>
> On the defendant's return from British Columbia he and his father, together, awakened the farm operation and in 1979 a metal barn was constructed on the defendant's property. The barn which faces the Front Centre highway has a concrete slab floor and a three-sided concrete lagoon behind the barn which is used for the

> collection of pig manure. The building is 40 feet by 60 feet and is referred to herein as the piggery. The piggery is used to house pigs and is located approximately 255 feet southwest of the front line of the Fogarty property and approximately 270 feet southwest of the Fogarty house. The piggery is located approximately 273 feet southeast of the Crouse property line and approximately 330 feet southeast of the Crouse residence.
>
> A record of the production of the defendant's piggery operation is as follows:
>
> | | |
> |---|---|
> | 1980 | 43 hogs |
> | 1981 | Total sales 271 pigs |
> | 1982 | Total sales 312 pigs |
> | 1983 | Total sales 441 pigs |
> | 1984 | Total sales 328 pigs |
> | 1985 to May 9 | Total sales 116 pigs |
>
> The defendant says that because of this action against him he has cut down his piggery operation from its peak in 1983. After he reduced his production a quota system was instituted in the Province and the quota allotted to the defendant [was] 221 hogs, considerably lower than the 367 hogs sold in his peak year 1983.
>
> The community of Front Centre is located on the Front Centre Highway, a paved road 1.3 kilometres in length running in a southeasterly direction from Provincial Highway No. 3 to the Lunenburg-Riverport highway. There are 26 residences on the Front Centre Highway and four residences on the Abbott-Beck Road, which is a short road running from the southeastern part of the Front Centre Highway diagonally to the Lunenburg-Riverport Highway. The properties in the community are for the most part neat and well maintained. The neighbourhood was categorized by some of the witnesses as being a rural residential area. There are out-buildings on most of the properties and some farm animals are kept by some of the residents. As is the case in other Nova Scotia communities, small mixed farming has abated to a point that those who keep farm animals keep them mostly for their own domestic consumption.

As there was in the preceding cases, there was evidence presented in *Fogarty* to indicate the defendant had not breached any regulatory standards or bylaws. He had obtained a building permit from the Municipality of Lunenburg before commencing construction of the piggery and he had engineering advice from the provincial Department of Agriculture and Marketing, with the result that "the building was engineered in such a way as to reduce, as much as possible, the emission of offensive odours in the direction of residences in the community". (71 N.S.R. (2d) 282 at p. 289) Moreover, it was obvious from the testimony that community opinion was divided on the question of whether the piggery interfered with the residents' comfort and enjoyment of their properties. The plaintiffs had a list of complaints not unlike the evidence presented by the plaintiffs and their witnesses in the *Breau* and *Desrosiers* cases. The dilemma this posed for the trial judge seems apparent in this passage at pp. 289 90:

> On the other hand witnesses from 17 residences in Front Centre gave evidence on behalf of the defendant. That evidence indicated that although at times an unpleasant odour emanated from the piggery operation, it did not interfere with their comfort or the enjoyment of their properties. The evidence indicates that those

> witnesses who barbecued and ate outside continued to do so after the construction of the piggery. Some of the witnesses on behalf of the defendant lived in closer proximity to the defendant's piggery than did some of the plaintiff's witnesses who complained of the severity of the odour and of it interfering with the use and enjoyment of their properties. Lynn Wamboldt lives with his wife and two infant children on the property adjoining the northwestern sideline of the defendant's field which abuts the Fogarty property to its southeast. Mr. Wamboldt gave evidence that he constructed an outside swimming pool on his property in 1984 and that the pool is used by his family on a regular basis during the swimming season. He said that the odour from the pig manure does not interfere with his family's use of their property and that they have outdoor barbecues on a regular basis.
>
> Both the defendant and his wife gave evidence that they have an outside patio and barbecue on their property which they use frequently. They hold an annual outside barbecue for approximately 50 persons. They gave evidence that no one had complained at their barbecues about the odours from the piggery operation. Mrs. Daurie said that not one person had every complained to her about the odour of pig manure. She washes clothes nearly every day and only on one occasion did she rewash her clothes. On that occasion her husband had spread manure directly underneath the clothesline. She said that her children never complained of the odour and that they spend a lot of time outside when the weather is fit.
>
> The defendant's property is kept in a neat and tidy condition and the farm residence is a very attractive and well-kept home.
>
> The evidence satisfies me that the defendant was not operating his piggery in an attempt to annoy or interfere with the plaintiff's use and enjoyment of their respective properties. *I am satisfied further that the defendant did and is doing everything reasonably possible to keep to a minimum the odours caused by his piggery operation.*
>
> *Unfortunately for the defendant his care in keeping the odour to a minimum does not necessarily mean that he is not liable for it. ...*
>
> An actionable nuisance may be caused without any bad conduct causing it. Therefore, although the defendant, in my opinion, is not guilty of any bad conduct I must consider whether the alleged harm caused to the plaintiffs is of such a nature as to render the defendant liable for it. [Emphasis added.]

Ultimately, the trial judge sided with the defendant and dismissed the action on grounds that might best be described as an enunciation of public policy. At page 292, he concluded:

> After considering all of the evidence it is my opinion that the plaintiffs have not discharged the burden of proving a nuisance to their personal comfort. *To find for the plaintiffs on the evidence adduced before me would create an unbearable burden for the defendant and indeed for the entire farming community of Nova Scotia.*
>
> That of course is not to say that there could not be circumstances where a farmer is guilty of causing an actionable nuisance to neighbours by the emission of odours from a farm operation. However, in the case at bar, I find on the one side that the defendant has done everything reasonably possible to control the emission

> of odours from his piggery operation. On the other side I find that some of the evidence of some of the plaintiffs was not properly motivated and the evidence on the whole does not satisfy me that any of the plaintiffs suffered substantial discomfort or inconvenience as is necessary to prove nuisance in this circumstance. [Emphasis added.]

The Court of Appeal took exception to the manner in which the trial judge resolved the matter. Speaking for the three appellate judges, Mr. Justice Matthews (in (1986), 77 N.S.R. (2d) 34 at pp. 36 - 7) stated:

> Faced with the two conflicting descriptions of the odours, the trial judge was obliged to make a judicial decision in favour of one or the other, but he did not do so. In effect, he said that all were honest witnesses and, therefore, he would resolve the matter simply on the basis of onus of proof. It is the function and duty of the trial judge to answer the basic question upon which the judgment of the court depended, that is, which version of the facts he accepted, and the difficulties of so doing do not relieve him from that duty. ...
>
> The parties were entitled to a decision based upon a proper consideration of the whole of the evidence and findings thereon. With contradictory evidence adduced on behalf of the parties as here, especially those witnesses who are similarly situate in respect to the respondent's property, with equal opportunity to smell the odours, it is the duty of a trial judge, both to the parties and to an appeal court, to resolve such conflicts in a more definitive fashion. If that were done, then disputes would be resolved or, at least, there would be a better opportunity for such resolution.
>
> That is not to say that it is always necessary to determine the question as to which witnesses are telling the truth, a sometimes impossible task, but when, as here, there is conflicting evidence from a number of witnesses called on behalf of each party which would determine the issue, then the better course for the trial judge is to make that difficult choice. ...
>
> It is difficult to understand the ratio of the trial judge's decision. After the comments quoted above, he then proceeded to decide the case on burden of proof.
>
> *In reaching his conclusion, it appears that the trial judge concluded that the appellants had not proved a nuisance in law because to so find on the evidence before him, "would create an unbearable burden for the defendant and indeed for the entire farming community of Nova Scotia" (an incorrect consideration of the applicable burden of proof),* and later "and the evidence on the whole does not satisfy me that any of the plaintiffs suffered substantial discomfort or inconvenience as it necessary to prove nuisance in this circumstance", whereas it is clear, if the evidence as adduced by the appellants were accepted, the appellants did prove private nuisance, that is, the respondent was using his land in such a way as to affect unreasonably and injuriously the enjoyment of the appellants' land. In so doing, he erred.
>
> In addition, in reaching his conclusion he weighed "on the one side that the defendant has done everything reasonably possible to control the emission of odours from his piggery operation", as against "On the other side I find that some of the evidence of some of the plaintiffs was not properly motivated and the evidence on the whole does not satisfy me that any of the plaintiffs suffered substantial

> discomfort or inconvenience as is necessary to prove nuisance in this circumstance". These were not the factors to be weighed. As the trial judge earlier said "his care in keeping the odour to a minimum does not necessarily mean that he is not liable for it". Having earlier recognized such assertions should not prevail, he seems to have applied for them in eventually resolving the issue.
>
> As well, the trial judge failed to specify what he meant by the comment "that some of the evidence of some of the plaintiffs was not properly motivated". We are left to speculate on a seemingly important comment where the trial judge should be explicit.
>
> The trial judge erred in applying the proper principles. I would allow the appeal. As this Court is unable to make the essential findings of credibility not having seen and heard the witnesses, I would order a new trial. The appellants are entitled to costs both in this court and the court below. [Emphasis added.]

From what the Court of Appeal stated and from what may be gleaned from other authorities, the trial judge was correct in stating that the defendants' careful attempts to abate the nuisance is no defence but he erred in trying to give an immunity to liability by bringing in the "public policy" considerations. The error was then compounded by his comments on the evidence presented, his questioning of the "motivations" of some of the plaintiffs and the indecision his judgement suggested in relation to the credibility of witnesses. The end result, with the call for a new trial, is somewhat inconclusive in that no further decision(s) on the case seem to have been reported. Knowing whether the litigation did not proceed further or whether the new trial was simply not reported might give the dispute a more conclusive ending but this unknown outcome is not a necessary ingredient in order to appreciate the central issues at stake in this dispute.

Of the four cases that have been reviewed, it is the Fogarty case which best illustrates the ultimate concerns of the agricultural sector. Even where a plaintiff may be the author of his own misfortune by coming to the nuisance or where the defendant has adopted practices that result in standards sufficiently high to satisfy most residents of the neighbourhood, the principles of law can result in the imposition of liability; it is this possibility that seems to be the root of the concern which has produced the request for "right to farm" legislation.

APPENDIX F

Legislative Assembly
Report of the Committee on Land Acquisition and Land Transfer to Non-Resident Corporations and Private Individuals

March 1971*

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* This report is found in the Journal of the Legislative Assembly of Prince Edward Island, 1971, at pp. 88 - 94.

Report of the Committee on Land Acquisition and Land Transfer to Non-Resident Corporations and Private Individuals, March 1971

March, 1971.

The Honourable Mr. Speaker and
Members of the Legislature.

The Special Legislative Committee on Land Acquisition and Land Transfer to Non-resident Corporations and Private Individuals submit the following Report for your consideration.

Arthur MacDonald, Chairman

The following resolution, made at the First Session of the 52nd General Assembly of the Province of Prince Edward Island, provides for the establishment of this special committee.

RESOLUTION

No. 10 Honourable A. B. Campbell gives Notice that tomorrow he will move, seconded by Hon. J. Elmer Blanchard, the following Resolution:

RESOLVED: That a Special Committee of Inquiry be appointed from the Members of this House to be known as the Committee on Land Acquisition and Land Transfer to Non-resident Corporations and Private Individuals. The said Committee shall consist of five members, who shall inquire into and determine the extent and statistics of land acquisition and land transfer of real estate in the Province of Prince Edward Island by non-residents, corporations and private individuals.

The said Committee shall have power to hold hearings during the present Session of the Legislative Assembly and throughout the year 1970 with power to send for persons, papers and records. The said Committee shall report to the Speaker of the Legislative Assembly at the Second Session of the 52nd General Assembly of the Province of Prince Edward Island, with their recommendations.

5:30 P.M. Sgd. A. B. Campbell

June 9, 1970 Sgd. J. Elmer Blanchard

The Special Committee of Inquiry was subsequently established consisting of the following members appointed by the Legislative Assembly:

Arthur MacDonald, Esq. - Chairman
Ralph Johnstone, Esq.
Russell Perry, Esq.
Walter Dingwell, Esq.
George Dewar, Esq.

The committee held four meetings during the summer and fall of 1970 and meetings have been held since this Second Session convened. People from various Government agencies were invited to the meetings and interviewed. They included Mr. Clifford Wulff, Land Development Corporation; Mr. Chet Davies, Assessment Branch; Mr. George Dargie, Resource Use Planning Unit.

Submissions from individuals and organizations were invited by advertisements in the press. As a result three briefs were received; one from the National Farmer's Union, one from the Charlottetown Jaycees and one from Mr. E. J. Powers, Professional Engineer, P.L.S., Stanhope, P.E.I.; together with several letters forwarded to the committee from the Premier's office.

These communications were studied and considered by the committee preparing its recommendations.

Other Provinces in Canada were contacted and requested to supply information regarding the foreign ownership problem in their respective provinces. The replies received indicate that the problem in other provinces, with the exception of Nova Scotia and New Brunswick, is mainly with Crown Land, and not privately owned land. This can be expected as resulting from the proportion of Crown and privately owned land existing in other provinces. In Table 1 showing distribution of Crown and privately owned land for Canadian Provinces from the Canada Year Book, Prince Edward Island is seen to have the highest percentage (94.0%) of privately owned land thus making the problem of transfer of private lands comparatively unique in Prince Edward Island.

The Province of Prince Edward Island exerts a minimum of control over the sale of privately owned land. This control is restricted to the purchase of larger tracts of land by "aliens" who must receive approval of the Lieutenant-Governor-in-Council. (Sec. 3 - Real Property Act - R.S.P.E.I. 1951 with amendment to 1964)

> "Aliens may take hold, convey, and transmit real estate in this Province; Provided that no alien, nor any person in trust for him, shall take or hold more than ten acres of land or take or hold land with a shore frontage exceeding five chains in the Province, except with the consent of the Lieutenant-Governor-in-Council, 1939, c44, s44, 1964, c27, s.1 and 2."

TABLE 1 - DISTRIBUTION OF CROWN AND PRIVATELY OWNED LAND IN CANADA

(from Canada Year Book 1969)

Province	Total Square Miles	Private Land		Fed. Lands*		Prov.Lands**	
		Sq. Mi.	%	Sq. Mi	%	Sq. Mi.	%
Nfld.	156,185	6,815	4.4	2,082	80.1	149,162	95.5
P.E.I.	2,184	2,052	94.0	79	3.6	53	2.4
N.S.	21,425	15,882	74.1	702	3.3	4,841	22.6
N.B.	28,354	15,465	54.5	763	2.7	12,126	42.8
Quebec	594,860	43,500	7.3	771	0.1	550,589	92.6
Ontario	412,582	45,526	11.0	3,587	0.9	363,469	88.1
Manitoba	251,000	53,380	21.3	3,097	1.2	196,494	78.2
Sask.	251,700	105,596	42.0	8,647	3.4	137,457	54.6
Alberta	255,285	99,038	38.8	26,112	10.2	130,135	51.0
B.C.	366,255	20,356	5.6	3,421	0.9	342,478	93.5
Yukon & N.W.T	1,511,979	93	0.01	1,511,866	99.99		
Canada	3,851,809	407,703	10.5	1,559,273	40.5	1,886,804	49.0

* Dept. of Public Works, Transport, Nat. Defense, Nat. Parks Indian Reserves

** Crown Lands, Provincial Forests & Parks

+ Duplication of lands designated as provincial parks and provincial forests hence figures does not add.

The amounts of land acquired under the Real Property Act by Aliens is given in the following schedule. The graph on the following page indicates the rapid rise in purchases by foreign owners.

THE REAL PROPERTY ACT
Approvals for Purchase by Aliens
Summary - Period 1964-1970 Incl.

Year	No. of Approvals	Total Acreage	Average Acre. Per Approval
1964	4	324	81
1965	10	682	68
1966	21	1617	77
1967	13	906	69
1968	19	1223	64
1969	42	2359	56
1970	51	3689 plus approx. 15 lots	72
Totals	160	10,800	69.5

As of mid-December, 1970 approximately 72,000 acres or 5.13% of the province was owned by non-residents. Of this total, 1.2% or 885 acres was owned by approximately half the owners in properties under five acres in size. Of these under five acres properties approximately 2/3 were under 1 acre in size. These properties, approximately 2/3 were under 1 acre in size. These properties, due to their small size are not taken into account in assessing the agricultural and recreational capabilities of nonresident owned land.

Non-resident owned land, in parcels larger than 5 acres, amount to about 71,000 acres or about 5.06% of the province. Only about 4.69% of the non-resident owned land is owned by companies (American and Canadian) which amounts to 0.24% of the province. About 42.9% of the non-resident owned land is owned by Americans - amounts to about 2.2% of the province.

If acquisition of land by non-residents was to hold at the present rate of approximately 22,000 acres per five years, some 204,000 acres or 14.5% would be foreign owned by the year 2000.

A Committee member, Dr. George Dewar, investigated the situation in regards to foreign ownership in Bermuda and reported to the Committee. Section IV of The Bermuda Immigration and Protection, "Restrictions on Acquisition of Property by Aliens" was studied. When an alien proposes to buy land in Bermuda, a license must be obtained from the Governor-in-Council. It is then advertised in the press that an alien has applied for a license to purchase a certain parcel of land. A Bermudian may then oppose such a license being granted.

The Committee requested the Resources Use Planning Unit to prepare a report on the statistics and implications of foreign ownership. This report is tabled for your information.

The increase in foreign ownership on P.E.I. is causing concern among residents. Foreign ownership can be considered good or bad depending upon how the land purchased is used. The Committee feels that the right of private owners to sell to the highest bidder should not be interfered with.

COMMITTEE RECOMMENDATIONS

(I) That the Government take steps to ensure the public of Prince Edward access to an adequate number of Island beaches.

(II) That the Government institute an assessment and tax policy that will encourage residents to own, develop and appropriately use available land.

(III) That non-resident owners and corporations be required to disclose their land holding on P.E.I. (A Land Disclosure Act)

(IV) That land use by foreign owners be regulated, so that speculation on land can be discouraged.

(V) That the regulations of the P.E.I. Land Development Corporation assure that the use of agricultural land be left to bona fide resident farmers.

(VI) That consideration be given to a Land Acquisition Act or similar provision to regulate the purchase of land by non-residents.

(VII) That Section 3 of the Real Property Act be immediately amended to require each transaction under this Act be advertised in the local press so that residents may be aware of land being sold.

ORDERED, That the Report of the Committee be adopted.

APPENDIX G

Report
of the
Prince Edward Island
Royal Commission
on Land Ownership and Land Use

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9 July 1973

Charles W. Raymond, Chairman
James Wells, Commissioner
Charles Jones, Commissioner

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Copy of an Order of His Honour the Lieutenant-Governor-inCouncil dated August 9, 1972.

No. 659/72

THE PUBLIC INQUIRIES ACT
ROYAL COMMISSION ON LAND USE AND OWNERSHIP IN PRINCE EDWARD ISLAND

Council having under consideration the questions of land ownership and land use in the Province of Prince Edward Island, did and doth hereby order that, under authority of Section 2 of the Public Inquiries Act (R.S.P.E.I. 1951, Cap. 130), a Commission do issue appointing

Charles Raymond, Truro, Nova Scotia, Chairman
James Wells, Alberton, Prince Edward Island
Charles Jones, Pownal, Prince Edward Island

to be Commissioners to make full inquiry and to make findings and recommendations into and concerning all matters relating to the ownership and use of land in the Province of Prince Edward Island, and without restricting the generality of the above terms of reference, to inquire into and report and make recommendations on the following:

1. The provision of prime shorelands and conservation areas to meet future public recreational needs.
2. The implications of the present and future demand for the land of this Province in the off-island real estate market.
3. The effects of rising land prices on family farm operations in Prince Edward Island.
4. Methods of assisting residents in developing their land resources for their own benefit while, at the same time, ensuring that our environmental quality as well as our heritage is protected.
5. Any other related matters which the Commission considers would be brought to the attention of the Lieutenant-Governor-in-Council.

Without limiting the powers of the Commission, Council directs the Commission, for the purpose of the inquiry

a. to consult with such organizations and individuals as the Commission deems advisable;

b. to accept for consideration such articles, and submissions from such person or organizations as the Commission may deem desirable;

c. to include in their considerations any question which they may hold to be relevant.

Council did and doth further order that the Commission may engage the services of accountants, engineers, technical advisers or other experts, reporters and assistants and also the services of counsel to aid and assist the Commission in relation to the enquiry.

Certified a true copy,

[original signed by]

Howard C. Jamieson
Assistant Clerk of the Executive Council

July 9, 1973

Hon. A. B. Campbell
P.O. Box 2000
Charlottetown, PEI

Dear Premier Campbell:

Some ten months after its appointment, this Commission presents its final conclusions and recommendations on the subject of land ownership and land use in Prince Edward Island.

Although we had hoped to submit this report at an earlier date, its conclusion was unavoidably delayed by the decision to hold extensive public hearings, and the numerous requests for extensions in time in the preparation and submission of briefs.

Study of the report will reveal the Commission's firm belief in the integrity of Island landscape and community. The following requirements are regarded as essential and inseparable in providing for the maintenance, and orderly development of this very special resource:

1 - A minimum maintenance requirement on the landholdings of all corporations, non-residents, and non-occupiers of land.

2 - A detailed land use plan for a coastal strip one- half mile in depth around the entire shoreline touched by tidal waters, together with appropriate legislative controls.

3 - The enactment of the necessary legislative machinery to support the participation of local citizens in the preparation and administration of more detailed community land use plans.

The repeal of the present non-resident land purchase legislation is recommended, but only after these new approaches have been adopted.

The Commission would like to thank you for the opportunity of serving in this task. It would also like to acknowledge its indebtedness to Mary Rawson, now a member of the B.C. Lands Commission, and through whose efforts the minimum maintenance concept is set forth in Volume II.

Respectfully submitted,

[original signed by]

C.W. Raymond
Chairman

[original signed by]

James Wells
Commissioner

[original signed by]

Charles Jones
Commissioner

PROPOSED GUIDELINES FOR A ROYAL COMMISSION INVESTIGATING LAND OWNERSHIP AND LAND USE IN P.E.I.

PURPOSE: To devise and recommend a set of land ownership and land use policies designed to deal with effects of new demands and pressures on the land resources of Prince Edward Island, and in so doing to provide the public with the opportunity to participate in the development of a land use policy.

GUIDELINES:

1. To investigate the provision of prime shore lands and conservation areas to meet future public recreational needs.
2. To determine the implications of the present and future demand for the land of this province in the off Island real estate market.
3. To investigate the effects of rising land prices on family farm operations in Prince Edward island.
4. To investigate ways to help residents to develop their land resources for their own benefit and, at the same time, ensure that our environmental quality as well as our heritage is protected.
5. To investigate such other matters as may occur to the Commission or may be referred to it by the public.

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INTRODUCTION

The Problem

During the past decade the very special landscape of Prince Edward Island has come suddenly within the recreational land market of Central Canada and the Northeastern United States. The growing pressures, frustrations and apprehensions of North American urban life, coupled with high personal incomes and ease of travel by both road and air, have allowed the city dweller to look ever farther afield for his recreational escape. Rural countryside is no longer looked upon by city dwellers as the living place of the unsophisticated and materially deprived, nor as merely a restful scene to be experienced during a two-week touring holiday. Rather it has become a safe, quiet harbour in which to put down anchor in the midst of changing times.

With some 80 per cent of North Americans living in larger urban centres, the number of potential 'back-to-the-land' purchasers is very large. Especially is this true in Prince Edward Island where well maintained agricultural landscape runs down to the very edge of a warm summer sea. Improved highways now put the Island within two days drive of New York and Toronto; air service connects Charlottetown directly to Montreal and Toronto, and by way of Halifax to Boston and New York. Both shoreline and interior lands are available at prices substantially below rural land values in either New England or Southern Ontario where the most attractive landscapes have already been heavily taken up by urban commuters and recreationalists.

These new pressures come at a time when the Island landscape is particularly vulnerable. Although farm consolidation is producing larger and more viable individual farm units, the actual number of farms and the total improved agricultural acreage have rapidly declined (See Figure 1). Only 55.4 per cent of the Island's surface was included in 1971 census farms. Even more significant has been the decline in farm population from 63% of provincial population in 1931 to 47.6 in 1951, and to only 19.1% in 1971. Larger numbers of Island landowners have moved from the land and/or turned to non-farm income sources, thereby increasing the acreage available to the recreational land market. Meanwhile, returning Islanders, as well as advertising and promotional efforts designed to stimulate Island tourism, have ensured a growing number of recreational land purchasers. The opportunity for quick speculative profit in land has attracted as well the interest of individual and corporate investors, both resident and non-resident.

Amendment of the Real Property Act

In April 1972, the Prince Edward Island government amended and enforced Section 3 of the Real Property Act(1) so as to restrict the purchase of land by all non-residents to no more than 10 acres and/or 5 chains (330 feet) of shore frontage without the approval of the Lieutenant-Governor-in-Council.

---

1. See Appendix 1.

Such a decisive reaction to recent increases in the acreage of non-resident landholdings is hardly surprising in a Province whose history turned on the question of absentee proprietors for more than 100 years.

> With the acquisition of the Island of St. John at the end of the Seven Years War in 1763 (the name, Prince Edward Island, was not adopted until 1799), the British gained possession of 2,000 square miles of potentially good farm land at a time when numerous members of the aristocracy and armed forces were clamouring for government favours. As a result of pressure from these groups, the Board of Commissioners for Trade and Plantation, the agency responsible for the Island's administration, was instructed to divide the area into lots that were then to be awarded by lottery to the most deserving of the land-seekers. A survey undertaken by Captain Samuel Holland was completed in 1766; it divided the Island into sixty-seven lots and three townsites; attached to each of the latter were royalties, small areas set aside for the support of the towns.
>
> The lottery, held in 1767, marked the beginning of a system of land proprietorship that was a major barrier to the orderly progress of settlement and land utilization in the colony for over 100 years.
>
> In return for the grant of land, which could either be sold or leased to tenants, the holder of each lot was required to fulfil, within ten years, certain conditions that governed the numbers and types of settlers he must place on his land and that required the payment of quit rents to the colonial government. Had the proprietors adhered to these conditions, settlement would have proceeded in an orderly manner. But the conditions were never effectively enforced; consequently most proprietors held their land in speculation, hoping that, as neighboring owners improved their lots, their own land would increase in value without any expenditure of money or effort.
>
> The effect of this system of land tenure was to concentrate the ownership of land in the hands of absentee landlords. Until the final solution of the land problem in 1875, there was constant strife between tenants and proprietors. Prince Edward Island afforded the most extreme example of the inappropriate and mismanaged land policies prevalent throughout British North America.(a)

The 'Act to Enable Aliens to Hold Real Estate' passed in 1859, allowed Americans for the first time to own land in the colony. While the intention was to attract American capital into the Island fishery, it nonetheless placed a limit of 200 acres on the landholdings of any alien, a restriction which stood for nearly 100 years. Only in 1939 was this restriction relaxed in law, allowing non-residents to hold more than 200 acres with the consent of the Governor-in-Council.

The recent 10 acre limitation on all non-resident holdings resulted from the growing concern of the Island legislature over the rapid increase in recreational land purchases. This concern was based on recent land title information made available by the modern system of land survey, land valuation and land parcel registration introduced to the Island in the late

1960's.(a) It was also based on the research findings of the provincial governments' Resource Use Planning Unit, presented to the legislature's special committee of inquiry "The Committee on Land Acquisition and Land Transfer to Non-Resident Corporations and Private Individuals" in February, 1971.(b) These sources indicated that as of mid-December 1970 approximately 72,000 acres or 5.13% of the province was held by non-residents, including some 29,936 cleared acres of Class 2 and Class 3 Agricultural capability.(c) Of still further concern was the rapid increase in the rate of purchase which indicated that in the absence of any controls, 50% of the Provincial surface would belong to non-residents by the year 2000.

THE COMMISSION

Appointment

In amending the Real Property Act the Island Government recognized that the new acreage and shorefront restrictions could be nothing more than a holding action; an attempt to 'cool' the rate of non-resident land acquisition while allowing Island residents the time and opportunity to arrive at more satisfactory long range solutions to the problem. As a catalyst for this process it appointed this Royal Commission in August 1972, to obtain the views of Island residents and to advise and recommend on more permanent approaches to the whole subject of land ownership and land use.

Terms of Reference

The Commission's terms of reference (see Frontispiece) are very broad and recognize the far reaching affects of new demands on Island land resources both from within and from outside the Province. From the land resource side, the subject touches on the total natural resource base of the Island and its productive potential. On the human side, it touches on the social and economic characteristics, attitudes, aspirations and life style of the landowners and of the Island community at large.

Public Hearings

Soon after its appointment, the Commission planned a series of public hearings to be held during the months of November and December at 13 points across the Island.

Nov. 2 - Montague, Regional High School
Nov. 6 - Souris Regional High School
Nov. 7 - Alberton Court House
Nov. 9 - Belfast Consolidated School
Nov. 14 - Crapaud, Englewood Regional High School
Nov. 15 - Wellington, Vanier Centre
Nov. 23 - Morell Regional High School
Nov. 28 - O'Leary, West Prince Service Centre
Nov. 30 - Kensington Regional High School

Dec. 5 - Rustico, Stella Marie High School
Dec. 7 - Charlottetown, Birch Court, Canada Research Station
Dec. 8 - Charlottetown, Birch Court, Canada Research Station
Dec. 11 - Summerside, Athena Regional High School
Dec. 12 - Tignish Fire Hall

The hearings were well publicized in the press accompanied by the Commission guidelines and a series of provocative questions intended to stimulate thought and discussion of the issues.

The Questions

- Are there too many off-Island land owners?
- Should we control shoreline cottage development?
- Do you favour Island-wide land use controls?
- Do NO-TRESPASSING signs offend you?
- Are 2,500 family farms sufficient on P.E.I.?
- Should poorer farmlands be reforested?
- Should farm woodlots be consolidated for better management?
- What are the barriers to better land use?
- How can the involvement of private citizens in the planning process be improved?
- Should urban development be more concentrated? And, if so, how?
- Are there enough parks and recreational areas for the people of P.E.I.?

Written briefs were solicited by letter from some 49 organizations, and through press notices from members of the public for presentation at the public hearing of their choice.

A portable graphic display of seven panels illustrating various Island land use problems and distributions was prepared as a basis for the Chairman's opening remarks, and for general discussion at the hearings.

Staff of the Rural Development Council were most helpful in making local space arrangements and in encouraging local residents to attend.

Attendance ranged form 20 to 60 persons at each of the hearings, and 29 written briefs were received.*

---

* See Appendix B [of this Report] for a list of written briefs and letters received from organizations and individuals.

Hearings for Civil Servants

In order to stimulate an open forum of opinion, the Premier clearly indicated that civil servants should feel free to present both factual information and their own personal opinions relating to the Commission's guidelines. The Chairman and his research co-ordinator met with personnel of most provincial government departments during the month of September for general discussion. Soon after, some 24 civil servants were asked to present information on specific topics, (as well as any additional opinions and observations) at a series of hearings held during October at the Commission's office, 154 Richmond Street in Charlottetown. These presentations were open to the press and provided a broad range of factual background to both the Commission and the public prior to the public hearings.

Private Hearings

In addition to the above, the Commission also agreed to receive the briefs of nine organizations in private hearings. Another 12 were received from private individuals through the mails.

Interim Report

To enable discussion of the Commission's findings during the Spring Session of the Provincial Legislature, an Interim Report was presented to the Premier on January 24, 1973. This report with its 20 recommendations was tabled in the House on February 22, 1973.

Final Report

The final report is presented in three volumes:

I - The Report
II - Minimum Maintenance
III - Background Documents

Volume I, which contains the main statement of the Commission and its recommendations, has been kept as brief as possible to ensure a wide Island readership.

Volume II is a philosophical presentation of the concept of 'Minimum Maintenance' which forms the basis of one of the more important of the Commission's recommendations. It was prepared by Mary Rawson of the Department of Regional Economic Expansion, now a member of the newly appointed British Columbia Lands Commission, who acted as research co-ordinator for the Commission.

Volume III contains the weight of the evidence presented to the Commission in written briefs or derived form other sources through research.

Staff

Miss **Mary Rawson**, Federal Department of Regional Economic Expansion - Research Co-ordinator;

Mr. **Alexander G. Griswold**, P.E.I. Department of Development Secretary;

Mr. **Harry O'Connell**, Rural Development Council - Organizer of Public Hearings;

Miss **Judy Hone**, Department of Environment and Tourism - Research Assistant;

Mr. **Garth Carragher**, Department of Environment and Tourism Draftsman;

Mrs. **Shirley Robinson**, - Typist

THE FACTS

AGRICULTURE

The Resource Base

Prince Edward Island contains some 1,400,000 acres. Measurement of recent Canada Land Inventory information on the agricultural capability of Island soils indicates that almost exactly one million acres (1,025,068 acres)* are rated as Class 2 and Class 3** and are truly well suited to agricultural use. But of this million, only 576,947 acres are actually cleared for farming. Even with the addition of a further 8,471 acres of cleared Class 4 soils which are suited only for pasture, or in some instances, tobacco, the total acreage of good quality cleared farmland on Prince Edward Island does not exceed about 585,000 acres.

---

* The new soil survey, now well advanced across the Island, may well adjust these acreages up or down.

** Class 1 land is confined in Eastern Canada to a small area in Southern Ontario - there is none in the Atlantic Provinces.

P.E.I. AGRICULTURAL LAND CAPABILITY
BASED ON MEASUREMENT OF CANADA LAND INVENTORY INFORMATION

	CLEARED	WOODED	TOTAL
Class 2	407,654	265,877	673,531
Class 3	169,293	182,244	351,537
Class 4	8,471	108,929	117,400
TOTAL	585,418	557,050	1,142,468
Classes 5, 6 & 7 Cleared and Wooded			258,842
Total Island Acreage			1,401,310

Past Agricultural Land Use Change

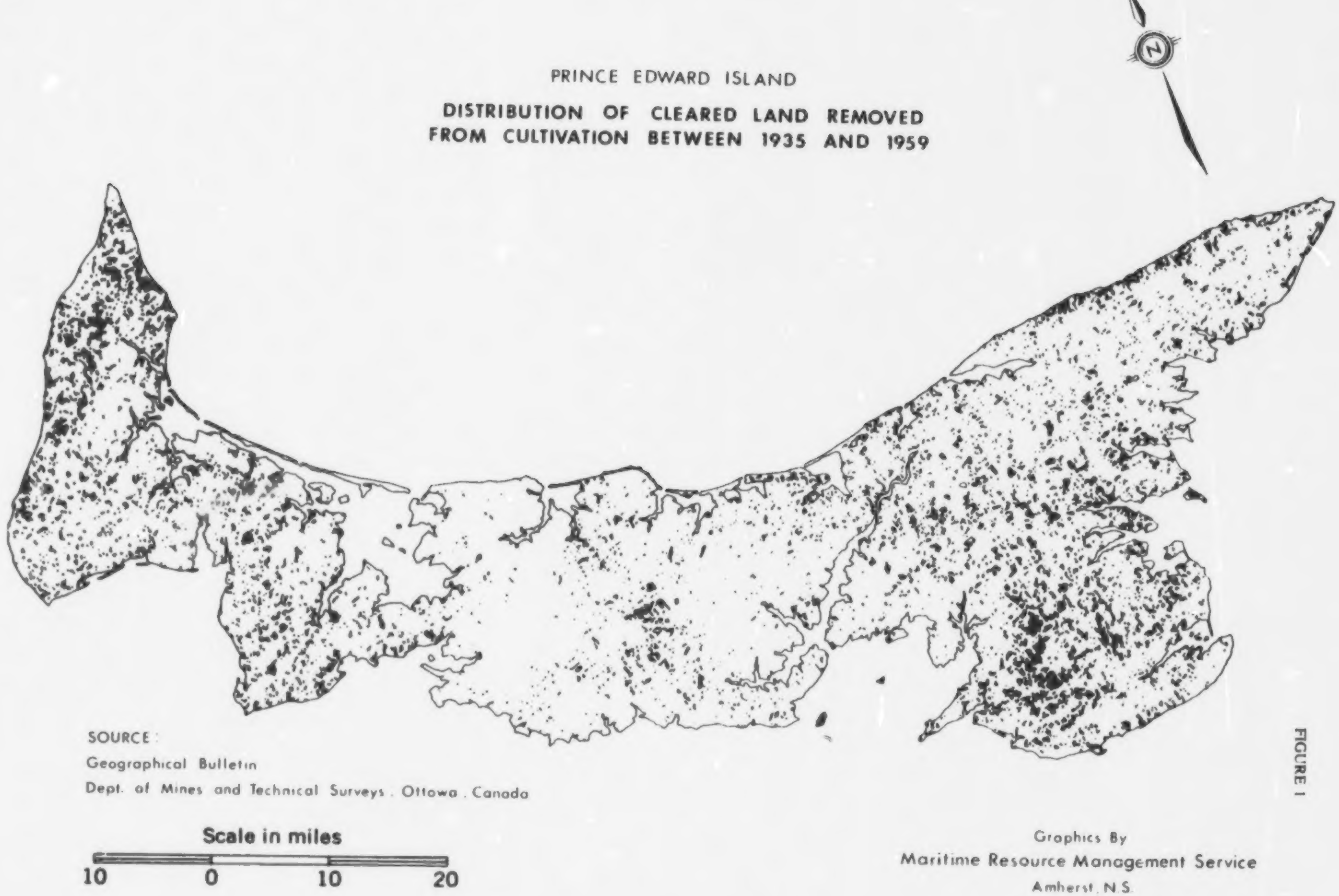
Not all of this high quality cleared land is still actively farmed. Nor is a substantial further acreage which though once cleared, has long since returned to trees. Despite its tranquil image, the Island landscape has been in a constant state of change ever since settlement began in the late 1750's, and particularly since 1930 with the gradual contraction in improved agricultural acreage.

In 1891, 87 per cent of the total land area was taken up in farms. The average holding was only 80 acres of which 30 acres remained in forest.

> After 1891, rural settlement declined coincident with the opening of the Canadian West and with industrial expansion in Central Canada and New England. However, despite this and although abandonment had begun as early as 1891 in the poorer lands at the extremities of the Island, the amount of improved acreage continued to grow in the central part until 1931 and in a few census subdivisions until 1941. Hence, the overall contraction in improved acreage was negligible between 1911 and 1931, despite a continuing decline in rural population totals. The fur-farming industry in the 1920's, the beginning of potato specialization, and the return to the land associated with the economic depression after 1929 all served to maintain improved acreage at between 765,000 and 770,000 acres during this period. (a)

PRINCE EDWARD ISLAND

DISTRIBUTION OF CLEARED LAND REMOVED FROM CULTIVATION BETWEEN 1935 AND 1959



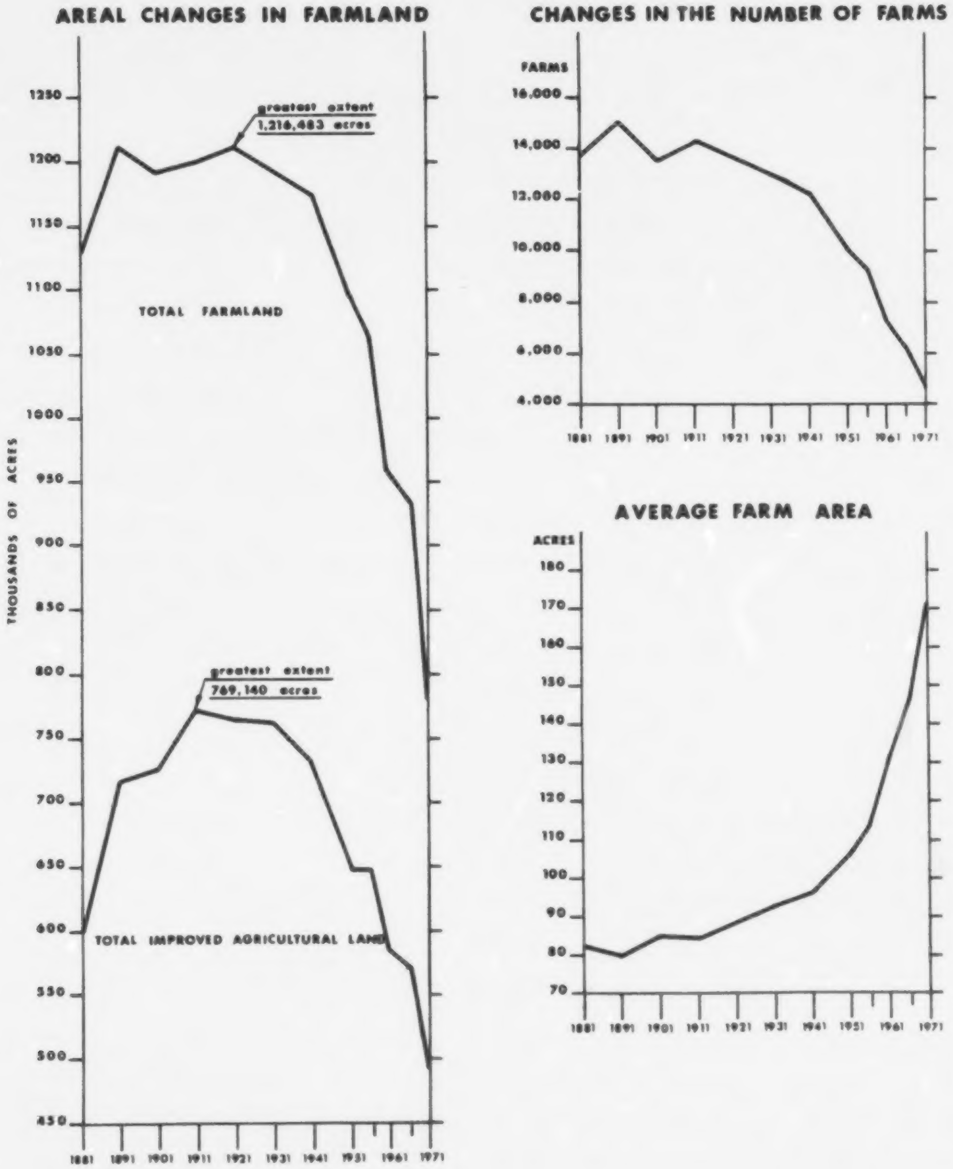
SOURCE:
Geographical Bulletin
Dept. of Mines and Technical Surveys. Ottowa. Canada

Graphics By
Maritime Resource Management Service
Amherst, N.S.
1973

FIGURE 1

FIGURE 2

Basic Changes in Area and Number of Farms, 1881-1971


AREAL CHANGES IN FARMLAND

CHANGES IN THE NUMBER OF FARMS

AVERAGE FARM AREA

Only since the late 1930's has the major contraction in improved farmland taken place. Out of a total reduction of 275,009 acres between 1911 and 1971, a third went out of production between 1941 and 1951, the decade during and following World War II. A further 151,361 acres has disappeared from the census improved farmland total since 1956.

The widespread introduction of tractor power that began on Island farms during the 1940's led inevitably to an increase in the size of the average farm unit, together with the abandonment of fields not suited to mechanical cultivation. Farm mechanization along with improved farm management, permitted the production increases necessary to sustain farm incomes, but it also placed the small farms and less efficient farmers in an increasingly marginal position. During the same period enlistment in the armed services, war industries and the post-war industrial expansion in Central Canada provided an abundance of employment alternatives that had not been available during the 1930's. More recently, the inauguration of universal old-age pensions has encouraged elderly people to cease farming and the inception of unemployment insurance benefits for fishermen during off-season had led to less emphasis on farming in the traditional fishing/farming economy of coastal areas. Expansion of employment opportunities in the service sector has accelerated the growth of Summerside and Charlottetown and encouraged the movement of rural residents to the towns. For many one-time farmers this occupational shift has taken the form of a gradual transition from full-time farmer, to part-time farmer, to non-farmer.

The result of these various trends has been an enlargement of individual farm size from only 80 acres in 1891 to 170 acres in 1971, but a reduction in total improved farm acreage from 770,000 acres to only 494,131 acres during the same period.

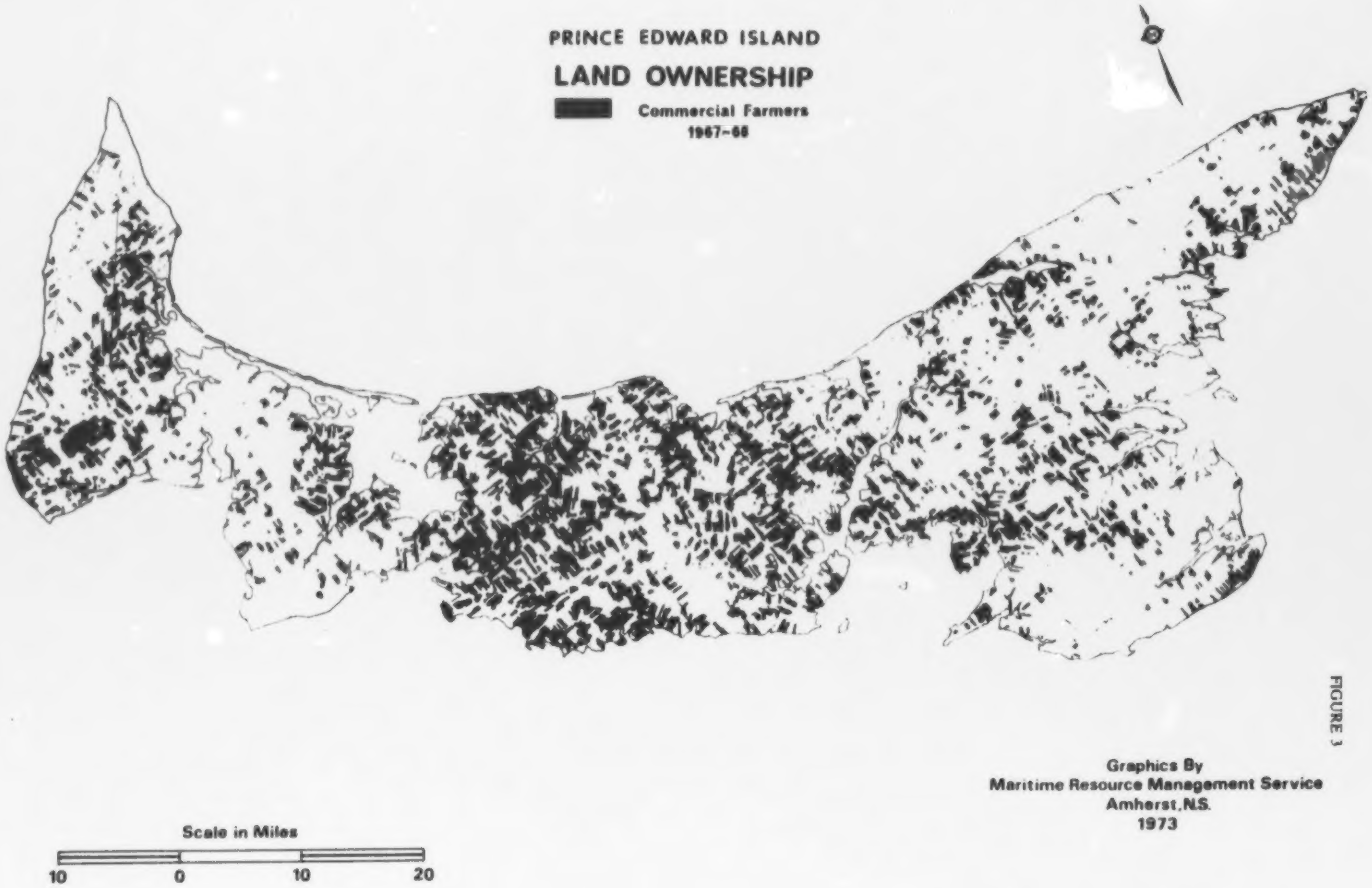

PRINCE EDWARD ISLAND
LAND OWNERSHIP
Commercial Farmers
1967–68
Scale in Miles
10
0
10
20

FIGURE 3

Graphics By
Maritime Resource Management Service
Amherst, N.S.
1973

Figure 3[a] clearly reflects a contraction of commercial agriculture to the larger blocks of Class 2 and 3 soils best suited to crop production.[b] In 1971, the Island farm community consisted of only 4,543 census farms, which together accounted or only about half (774,630 acres) of the Island's total 1,400,000 acres (See Figure 2).

Despite the enormous social cost involved in the abandonment of marginal agricultural lands, there can be little doubt that the concentration of the industry on the most productive soils is in the long-term interests of Island agriculture. At the same time it has led to the abandonment of a significant acreage of good land along with the bad. It has left former clearings to regenerate in genetically poor trees of little value to forestry. It has left approximately 100,000 acres of cleared Class 2 and Class 3 land in the hands of either non-residents, or resident landholders dependent on non-farm income sources. It has also weakened the social fibre of many of the Island's rural agricultural communities.

Erosion Problems

With the trend toward fewer, but much larger and more specialized farms has come also a major increase in the size of individual fields and an aggravation of soil erosion problems.

Evidence presented to the Commission gives strong indication that the continued clearing of trees from stream banks, and the removal of all hedgerows is not necessary to the accommodation of modern tractor-drawn farm equipment. It also indicates that these practices have: (a) accelerated the erosion of Island soils from both water and from wind; (b) lowered the water quality of many Island streams through serious siltation, the addition of chemical nutrients, and through lack of natural shade; (c) lowered ground surface growing temperatures; and (d) had a negative affect on the visual and aesthetic quality of Island landscape.

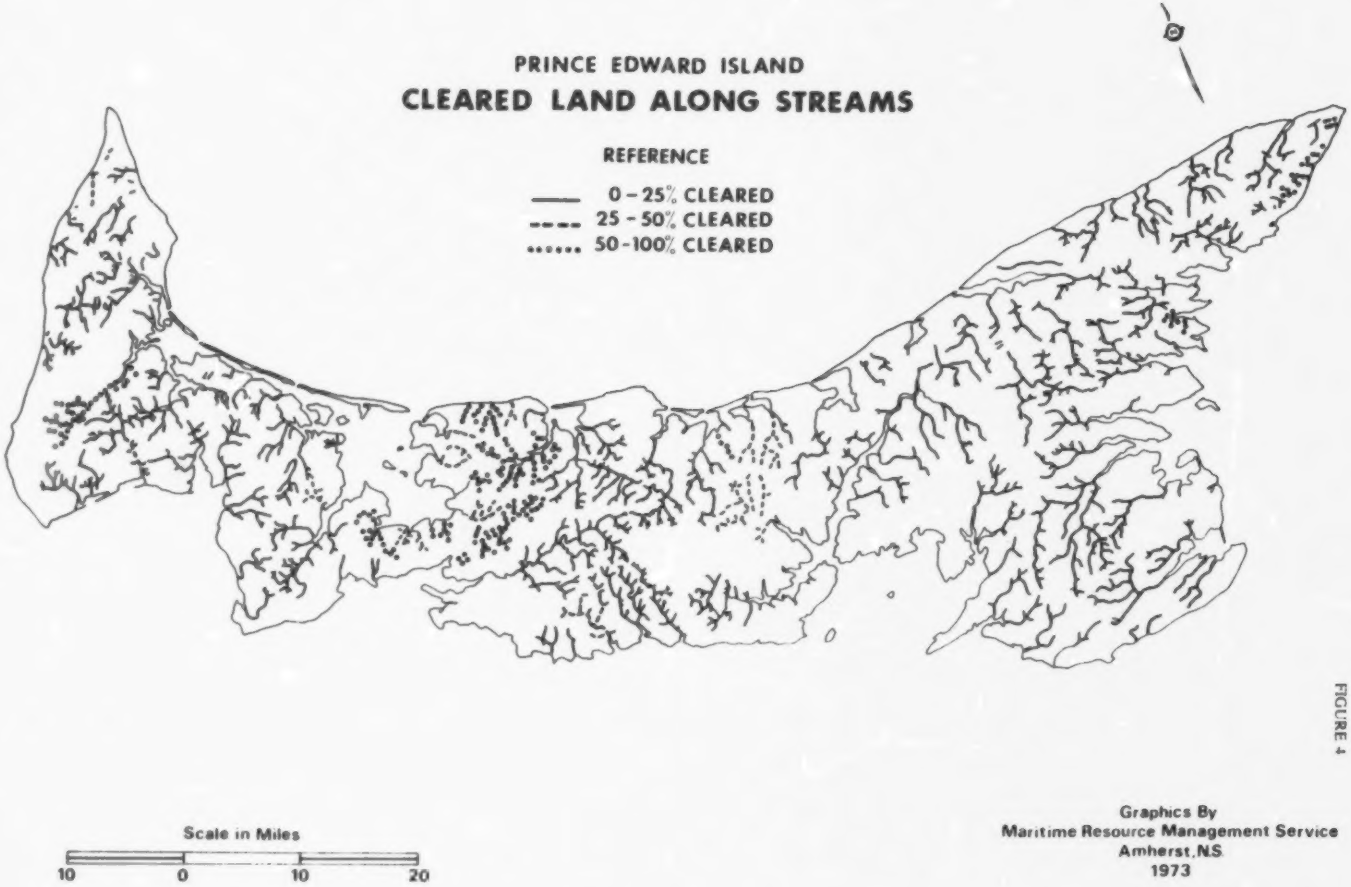

PRINCE EDWARD ISLAND
CLEARED LAND ALONG STREAMS
REFERENCE
0 - 25% CLEARED
25 - 50% CLEARED
50-100% CLEARED
Scale in Miles
10
0
10
20

FIGURE 4

Graphics By
Maritime Resource Management Service
Amherst, N.S.
1973

RECREATION

Of all the forces at play in the Island's agricultural landscape, none is more far-reaching than the impact of new recreational activity. Within the past decade it has led to a startling increase in non-resident ownership, and threatens to seriously alter the aesthetic quality of the farmscape and shoreline which form the basic recreational attractions.

Non-Resident Land Purchase

Amount -

As of March 2, 1973, landholdings belonging to individuals non-resident to Prince Edward Island amounted to at least 89,000 acres,* or 6.3% of total land area, and included at least 100 miles or a minimum 11.5% of total shore frontage. This does not include lands acquired by non-residents whose deeds have not yet been registered, nor does it include land held by corporations whose head office is in Prince Edward Island. If these exceptions were included, the total would reach considerably more than 100,000 acres.

Half of the non-residents hold plots of less than five acres, primarily cottage lots, which together account for less than 2% of total non-resident acreage; hence the concern for larger holdings as reflected in the recent legislation and as borne out in the 1972 requests for larger purchases. The fact that only 10,920 acres were approved for purchase out of the 17,325 acres applied for, indicates that the legislation has indeed had a 'cooling' effect. The case with respect to shoreline has been somewhat similar.** Nonetheless, a continuation of the 1972 rate of purchase under present restrictions would place more than 25% of the Island in non-resident hands by the year 2000.

---

* See Appendix C, Tables 1 and 2 [of this Report] for a more complete acreage breakdown of non-resident landholdings.

** See Appendix C, Table 3 for statistics on land sales under petitions no. 8-244.

NONRESIDENT OWNERSHIP ON P.E.I.

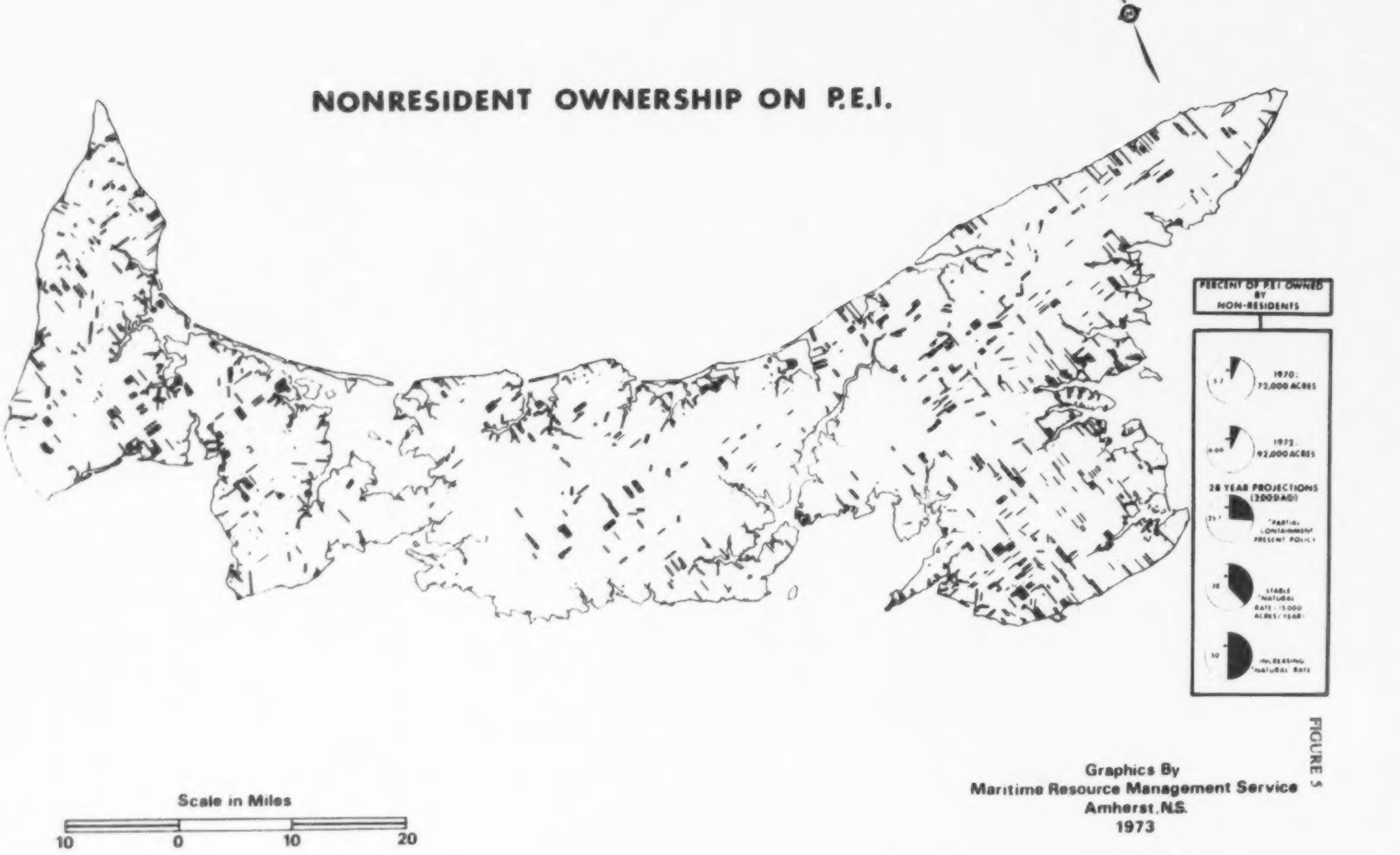

PERCENT OF P.E.I. OWNED
BY
NON-RESIDENTS
5.7
1970:
72,000 ACRES
6.66
1972:
92,000 ACRES
28 YEAR PROJECTIONS
(2000 A.D.)
25.7
"PARTIAL
CONTAINMENT"
PRESENT POLICY
38
STABLE
"NATURAL"
RATE (5,000
ACRES / YEAR)
50
INCREASING
"NATURAL" RATE
Scale in Miles
10
0
10
20

FIGURE 5

Graphics By
Maritime Resource Management Service
Amherst, N.S.
1973

Location -

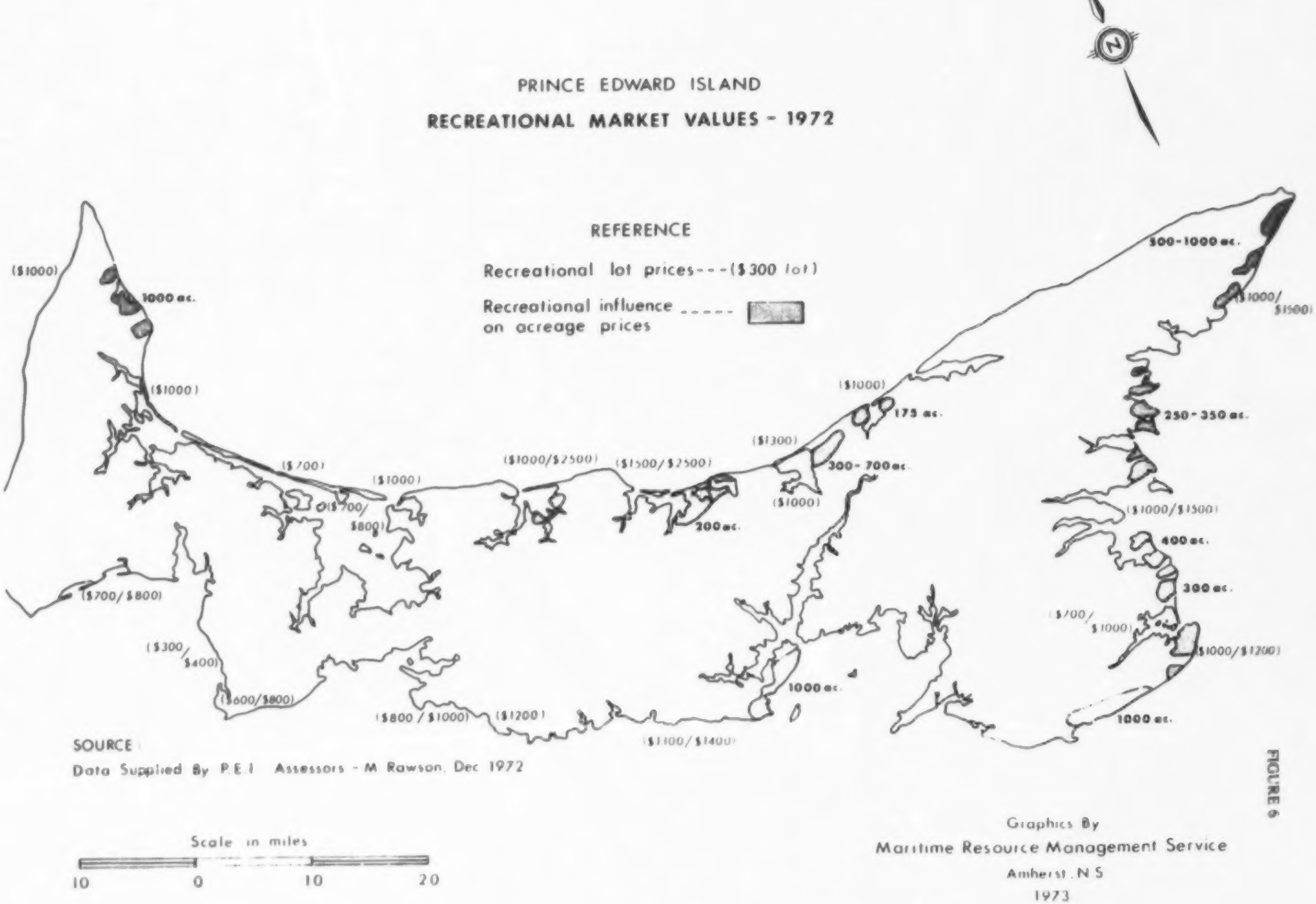
Non-resident land purchases are Island-wide in their distribution.

Of the 1,141 linear miles of Island shore frontage washed by tidal waters, more than 100 miles, or almost 10% of the total belongs to non-residents; 16 miles approved for purchase in 1972 alone. Coastal purchases, which include most holdings of less than 10 acres, have shown a marked preference for Class 1, 2 and 3(a) shorelines fronting the best sand beaches on the Island, the same beaches which will be increasingly required for public use.

The larger purchases show less preference for the coast, and tend to be located in areas where soils are marginal to agriculture, and where land values are low. Nonetheless, larger holdings include at least 17,500 acres of cleared Class 2 land, some of the best farmland on the Island.

PRINCE EDWARD ISLAND

RECREATIONAL MARKET VALUES - 1972


REFERENCE
Recreational lot prices---($300 lot)
Recreational influence ----- on acreage prices
($1000)
1000 ac.
($1000)
($700)
($1000)
($700/ $800)
($1000/$2500)
($1500/$2500)
200 ac.
($1300)
($1000)
300-700 ac.
($1000)
175 ac.
500-1000 ac.
($1000/ $1500)
250-350 ac.
($1000/$1500)
400 ac.
300 ac.
($700/ $1000)
($1000/$1200)
1000 ac.
1000 ac.
($1100/$1400)
($1200)
($800 / $1000)
($600/$800)
($300/ $400)
($700/$800)
Scale in miles
10
0
10
20

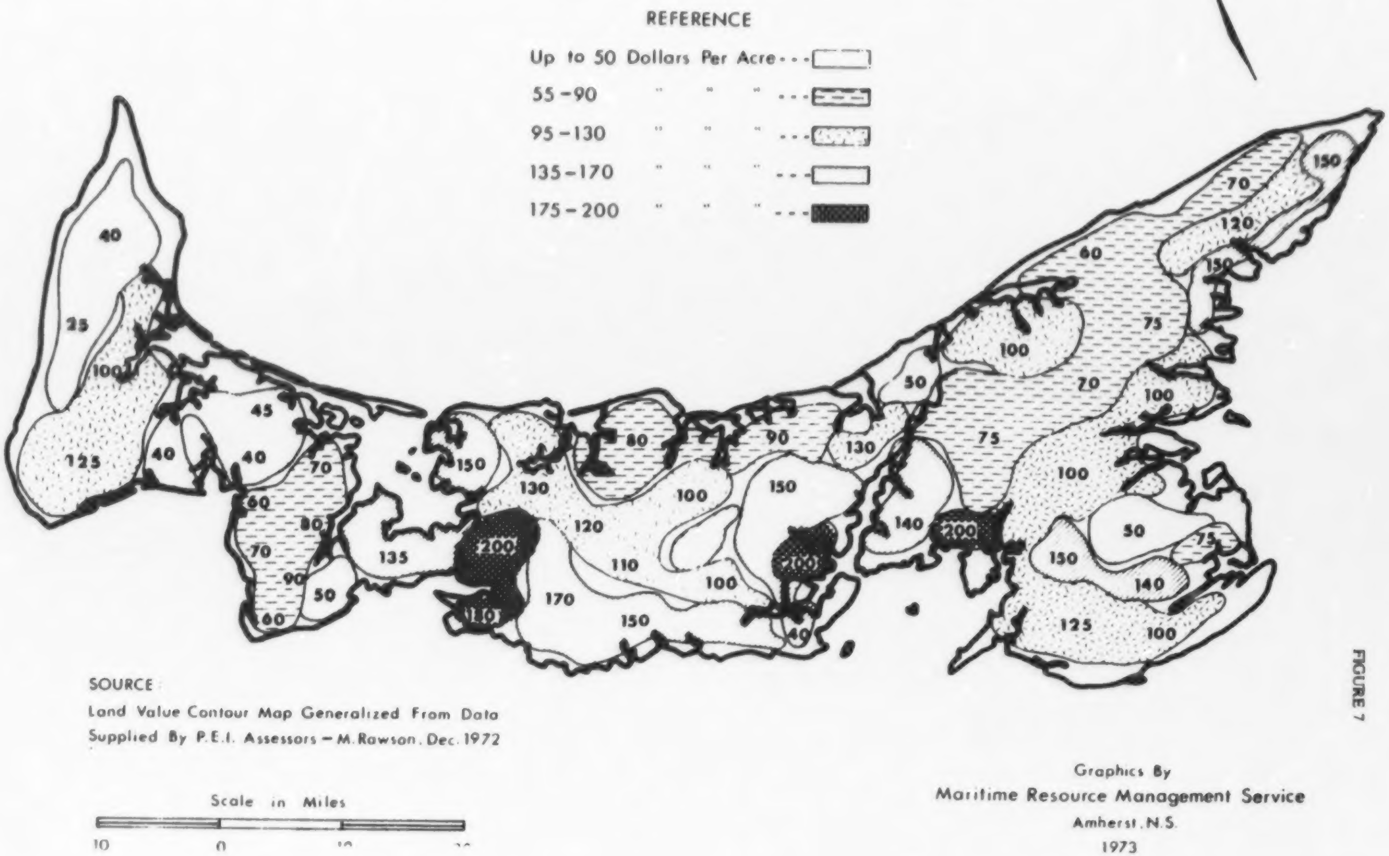
SOURCE:
Data Supplied By P.E.I. Assessors - M Rawson, Dec 1972

Graphics By
Maritime Resource Management Service
Amherst, N.S.
1973

FIGURE 6

PRINCE EDWARD ISLAND

AGRICULTURAL MARKET VALUES - 1972


REFERENCE
Up to 50 Dollars Per Acre
55-90 " " "
95-130 " " "
135-170 " " "
175-200 " " "
N
40
25
100
125
40
45
40
70
60
80
70
90
60
50
135
150
130
200
110
120
80
100
110
170
150
100
90
150
200
100
40
130
50
140
200
75
100
20
75
60
70
120
150
150
100
100
50
75
150
140
125
100
Scale in Miles
10
0

SOURCE:
Land Value Contour Map Generalized From Data
Supplied By P.E.I. Assessors – M. Rawson, Dec. 1972

Graphics By
Maritime Resource Management Service
Amherst, N.S.
1973

FIGURE 7

Impact -

The impact of coastal purchases has reflected itself in major land value increases (See Figure 6) which make it increasingly difficult for either the Province or individual Islanders to invest in shoreline recreational property. Of more concern, has been the erection by non-residents of fences and No-Trespassing signs preventing access to the shores in places where local Islanders have considered it traditional.

The impact of large acreage purchases has also been considerable. The average values for good farmland presented in Figure 7 reflect major increases despite the low prices received for Island farm products in recent years. However, Islanders express their main concern over the larger non-resident holdings in terms of the use or non-use to which the land is put. Their fears and opinions closely parallel those of a recent planning publication on the Georgian Bay area of Ontario.

> Lately, some disturbing trends have taken place in the region's farming country. People who are not farmers have been buying farms for weekend recreational use and as longterm investments. Some of these new owners are not bothering to farm the land, or even to rent it to neighbouring farmers. Instead, they have allowed it to revert to weeds. This practice not only detracts from the appearance of countryside but also presents problems to working farmers as weeds spread to their land.
>
> "Weekend farmers" - or, rather, non-farmers - also have an effect on land prices that is detrimental to established farmers. Having bought their land partly as an investment, some non-farmers and part-time farmers are happy, given the chance, to sell at a handsome profit to subdividers. And so potentially productive farmland disappears. Non-farmers, meanwhile, tend to bid up the price of land making it hard for full-time farmers to expand their operations at reasonable cost.(a)

A recent analysis of 150 applications filed by non-residents intending to purchase more than 10 acres of land in Prince Edward Island indicates that:

- 4.6% were interested in commercial farming.
- 18.6% were interested in hobby or subsistence farming.
- 38.6% were purchasing as a summer resident only.
- 28.7% were purchasing mainly as an investment for cottage subdivision, tourist development, or simple speculation.

Cottage Lot Subdivision

Closely allied to non-resident land purchase in coastal areas, has been the subdivision of prime recreational land for summer cottages. While 3,870 new cottage lots were approved during the five years from 1968 to 1972, only 569 building permits were issued, indicating that subdivision was far in advance of actual demand.

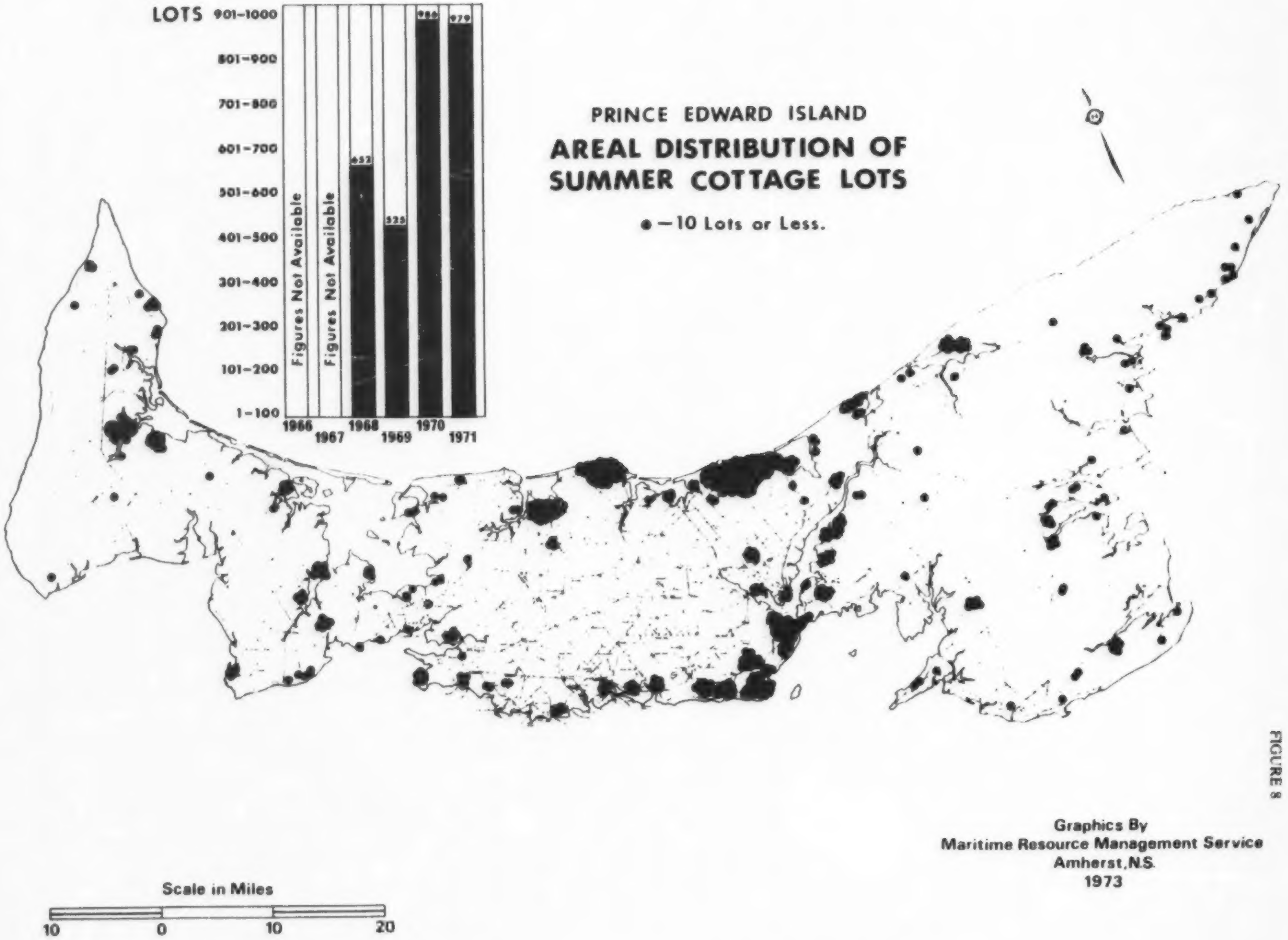

PRINCE EDWARD ISLAND
AREAL DISTRIBUTION OF SUMMER COTTAGE LOTS
● —10 Lots or Less.
LOTS
901-1000
801-900
701-800
601-700
501-600
401-500
301-400
201-300
101-200
1-100
1966
1967
1968
1969
1970
1971
Figures Not Available
Figures Not Available
652
525
980
979
Scale in Miles
10
0
10
20

FIGURE 8

Graphics By
Maritime Resource Management Service
Amherst, N.S.
1973

COMPARISON OF LOTS CREATED
AND BUILDING PERMITS ISSUED

	1968	1969	1970	1971	1972	TOTAL
Summer Cottage Lots Created	652	525	986	979	662	3870
Building Permits Issued for Summer Cottages	71	107	127	118	146	569

The growth of private recreational developments in coastal areas has led to a real problem of public access to the beach, further compounded by the shortage of public parks and day use areas along the shore. Those beaches which are accessible tend to be overused, often threatening irreversible damage to sand dunes and fragile coastal habitats.

FORESTRY

Although the Island woodlot has always played a very faint second fiddle to the farm, woodland does cover some 47 per cent of the provincial land surface and seems certain to expand.

The decline in improved census farm acreage from 645,492 in 1956 to 494,131 acres in 1971 gives clear indication of the continuing reversion of farmland back to trees.

Forested acreage is divided into approximately 7,000 small woodlots of which at least 3,000 contain less than 30 acres. Such small holdings have defied serious management over the years and have degenerated in both quality and species composition. Even so, they tend on average to be underused. While there is overcutting in some areas, less than half of total annual growth is being harvested for the Island as a whole. A recent sample survey of 2,000 of the larger woodlot owners(a) indicated that 56.7% had never received any income from their woodlots. It also indicated that 86% did not wish to expand their woodlots, mainly because of "insufficient return".

Poor marketing and poor use of wood are at least partly responsible for the low returns to Island woodlots. Because the small-scale, seasonal and undercapitalized Island sawmills are unable to compete with pulp dealers in the roadside purchase of sawlogs, much of this material is being sold for pulp. The lumber which is sawn on the Island brings a poor return since in most cases it does not meet C.M.H.C. mortgage standards. Hence, most of the finished lumber used in the construction of Island homes is imported from the mainland.

THE ISLAND AS A SPECIAL PLACE

In the minds of most men there is something special about an Island - a distinct geographical entity clearly defined on all sides by the water's edge. Isolation from without promotes close association from within and fosters the strong sense of community identity for which most men yearn.

But there is something particularly special about Prince Edward Island where moderate climate, deep stone-free soils, gentle slopes and good drainage have endowed more than two-thirds of the surface with top quality agricultural land.

Even the French who claimed the Island during the late 1600's and early 1700's regarded it as separate from Acadia and as a potential breadbasket for the Fortress of Louisbourg. The English recognized the same agricultural potential and established the Island as a separate colony in 1770 [sic] with a unique, though highly mismanaged settlement policy, which was intended to lead to rapid agricultural settlement. Although the struggle to wrest individual land title from absentee proprietors continued for more than 100 years, it nonetheless united Islanders in a common cause, and developed a deep and abiding attachment to the Island community and to the concept of individual land title. The high quality resource base also promoted an unusually dense pattern of rural settlement related to a tight network of red dirt roads.

The original European settlers came to the Island with a well developed agricultural tradition. They found themselves on a resource base with an agricultural potential unique in the Maritime Provinces, and with ready access to distant markets by way of water. This fortuitous combination of human and physical resources resulted in a wide measure of rural prosperity. It also resulted in the lush, pastoral, seaside landscape, which forms the Island image in the hearts and minds of residents and non-residents alike.

Within this landscape developed strong independent rural communities centered around church and school, and other farm and rural organizations. In the absence of county government structures, community services were planned, supported and managed directly from within the local communities. As recently as the 1930's the land tax for the support of schools was assessed and collected from within the more than 300 local communities to meet the requirements of their own elected school boards.

From the local communities, the lines of political authority have always led directly to the provincial government in Charlottetown. Travel for special trade and services, and for the great annual agricultural show and social event, 'Old Home Week', has converged as well on Charlottetown, the largest urban centre on the Island. Similarly, the Charlottetown newspapers and television station cater to an Island-wide audience with their heavy accent on Island news coverage. Consequently, provincial status has always been an intimate and immediate concept to all Islanders, sustaining a very real pride of both local and Island-wide community through the years. As recently as 1930, an atlas published for use in Island schools was entitled, "An Atlas of Prince Edward Island and the World". (a)

But perhaps most at stake, with the arrival of non-resident land owners in this special Island landscape, are those rights and expectations which are unwritten but which at least until very recently have been very clearly understood by all members of the rural community. While the community has promoted and respected the independence and pride of individual landholders, it has also looked askance at those whose buildings went uncared for, or who husbanded land poorly. A community right of access was also well understood, and problems of trespass were practically unknown. One was not expected to ask permission to walk over the property of others to reach the trout stream or the beach, for it was understood that one would show respect to livestock and planted crops, that one would not cut fences, and that one would close the gates behind one.

The Commission realizes that Island landscape and community with its unwritten attitudes, rights and expectations cannot be frozen in time. At the same time it feels that every reasonable effort should be made to respect and support them wherever possible in the special Island circumstance. For it is these very qualities which make the Island increasingly special in a larger world where such qualities become increasingly rare.

MINIMUM MAINTENANCE

The most repetitious theme throughout the public hearings was the importance of land use as opposed to land ownership. The belief that who the owner is, is not so important as what use is made of the land is intellectually, morally and otherwise appealing. Nonetheless, the characteristics of both the owner and ownership (i.e. conditions of tenure) are important because both may affect land use. The public has indicated their understanding of this, and they have also indicated their priorities:

(1) land use;

(2) land tenure (conditions);

(3) land owner - (a) non-resident;

(b) corporate.

The overriding concern with land use was articulated in terms of such tangible problems as allowing properties to grow up in weeds and bushes in the midst of adjoiners' cultivated fields, the growing number of No-Trespassing signs, and non-maintenance of fences. Similar charges were laid against the holdings of the provincial Land Development Corporation. In both instances the concern was expressed in terms of both the nuisance value and the unsightly impact on the Island landscape.

The Commission strongly recommends the imposition of a minimum maintenance requirement, starting with the following five landowner groups:

(1) - the Land Development Corporation;(a)

(2) - all corporate landholders;

(3) - non-resident aliens;

(4) - non-resident Canadians;

(5) - all non-occupiers of land;

and extending eventually to all landholders on the Island. It does not envisage the requirement as a demanding or oppressive one, rather as a slight but steady pressure on the non-users and poor users of land.

It is recommended that an annual maintenance fee be levied on all of the landowner groups referred to above. This fee may be paid in cash (along with the tax levy), or it may be worked off in "management". If the minimum maintenance requirement was eventually extended to all landholders, it is assumed that all farmers would automatically be credited with the fee.

The Concept*

The concept of minimum management or minimum maintenance of land is, in essence, the concept of stewardship. It is a concept pervasive in human history and culture. It has been expressed in many contexts -- theological and philosophical, legal, economic and practical. It says to individual humans that how they use land matters; it matters as much to their fellowmen now and of future generations as it does to themselves.

Precedents

It is because the concept of stewardship or trusteeship of land has universal validity that one can find precedents in any country, either in custom or specified by law, that require "owners" of private land to consider the interests of non-owners. In most instances this consideration is merely a directive not to cause harm (as in weed control by-laws); in some, it demands restitution for harm caused; and in others it requires open or common access to benefits (as in fishing or walking rights).

Method

The proposal for a minimum management requirement or minimum maintenance fee is symbolic of this "third party" concern. It is meant to exert a steady pressure toward proper land use, and to be a recurring reminder of the community's indisputable interest in the use and husbandry of land. *Since everyday care and effort directed to land is wanted more than revenue to the treasury, the requirement relates primarily to levels of land use, and only secondarily to fees in lieu of performance.*

Criteria

While the concept of minimum management is a simple one and readily acceptable, it is not such a simple task to make it work. To translate the concept into practice requires: (a) criteria of management and (b) measurements of management effort; (c) convertible to a common denominator. On farm fields good management might include crop rotation, weed control, contour ploughing and the application of fertilizer. In woodlands -- pruning, fencing and pest control; but how much, and what use, will depend on what the land is capable of.

Measurements of Productivity

Land has natural capabilities that vary from site to site almost as much as human capabilities vary from person to person. To be aware of this is to settle for some classification that, while it makes orderly and fairly equitable performance measures possible, is not defended as a sacred absolute. Bench marks of performance, particularly for productive soils, can be established reasonably, and with some precision, in this way.

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* For a more detailed exposition of the minimum maintenance concept see Volume II of this report.

Measurement of Intangibles

While the performance of certain lands may be measured in terms of real things produced, over time, the others -- wildlife lands, beaches and recreation areas in general -- provide largely intangible, though instantaneous and renewable benefits. These benefits are more than the obvious pleasures of nature's sounds, views, and smells. The land's capability to produce such benefits is limited only by its tolerance for humans. Since the human need for these intangibles is subtle, definite, and probably limitless, *the principle of open access to nature must be measured not against a scale of man's needs but against the land's tolerance capability.*

"Externalities"

Managing land to a stated level preserves not only the owner's direct interest but "everyman's" interest in erosion control, beauty and open space, off-site job opportunities -- any and all indirect interests. As the concept of minimum management is developed through specific criteria and performance measurements it becomes apparent that the core of concern is in what the economists call "externalities". They are not the same as intangibles, but they are almost as difficult to measure.

Scales of Performance

According to theory, market value of land should reflect "externalities", intangibles, and the productive value of land; and it does. But market value is also sometimes aggressively distorted by counterfeit demand. An alternative is to tie management levels to C.L.I. soil capabilities. In other words, if the market is not working, we may have to go to a scale with less finesse and sensitivity but which, at least, does not bend easily to influence beyond Islanders control.

For each major category of land capability in the Canada Land Inventory -- Agriculture, Forestry, Recreation, and Wildlife -- a number of management levels can be described in practical terms. It is possible to say how many days' work would normally be required as well. Thus, for every 40 acres of woodlot, a superior level of management might require 10 days each year in thinning, keeping firebreaks ploughed, removing diseased tress, erosion control, etc.; less than three days might mean poor management.

Fees in Lieu of Management

While the principal purpose of establishing minimum management standards for land is to raise basic levels of maintenance, it is recognized that alternatives must be made available to the individual owner. Choices lie within land use alternatives of course, but more obviously in the payment of a fee in lieu of management. There are a good many people, businessmen and offIsland owners among them, who may choose to pay a fee in lieu of meeting the maintenance requirement. *The fees adopted should lean to the high side rather than the low side of work day equivalents to encourage actual management as the choice.*

Inspection and Control

While some localities may want to set maintenance requirements above Province-wide minimums, the establishment and smooth working of a minimum management requirement applied to all lands in the Province will take time; perhaps five years. It can be phased in by partial application either in terms of level of enforcement, categories of owners, classes of land use, or some combination of partial applications. The main means of control will be the owner's declaration (with the annual property tax return) that he has performed minimum management requirements on the land. Periodic aerial photography is available to indicate where inspection efforts should be concentrated. Annual random sampling and follow-up field inspections can be made by agricultural and forestry extension workers. Assessors who visit each property once in three years check the level of maintenance as part of their appraisals.

Application

The concept of minimum maintenance is essentially conservative, and the social benefit apparent. The Commission is confident that it will be accepted by the people of the Island for all corporations, non-residents and non-occupiers. Once the objective is clear to everyone and when it is understood that genuine human hardship will not result, it might be extended to all landowners on the Island.

Conclusion

The Commission feels that the concept of minimum maintenance is in keeping with the Island sense of community and concern for land. It exacts from the corporation, the non-resident and the non-occupier of land, their fair share in maintaining the use and productivity of the Island land base, and by so doing, will assist in drawing the newcomer closer to the mainstream of community life. In fulfilling the maintenance obligation, non-users of land are likely to be encouraged to make their cleared fields available for the use of nearby farmers. In the same way, it should induce additional woodlands into local co-operative woodlot management schemes. In other words, it should stimulate a more productive use of land, with positive benefits to the community, the economy, and the landscape of the Province.

The Commission also realizes that Minimum Maintenance will not of itself solve all the problems of use and ownership besetting Island landscape and community in the 1970's. It requires to be guided and paralleled by a variety of land use plans, as well as other more specific controls and inducements that are recommended in the chapters which follow.

THE GENERAL LAND USE PLAN

The Need

In the face of the pervasive new pressures at work in their community, Islanders have expressed real apprehension over the future use and appearance of their garden province.

Clearly there are major differences between the attitudes and landscape requirements of rural, urban and recreational land users. The need to rationalize and integrate these requirements is crucial if Island landscape and community are to sustain their unique qualities in the long term. The economic rationale for balanced and related growth in agriculture, tourism and urban centres has a spatial or geographical dimension which requires immediate definition in a general land use plan.

Preparation

The basis for a general land use plan is clearly the capability and productive potential of the physical resource base upon which the Island economy so directly depends. This information is already available as a result of the Canada Land Inventory, now complete for the entire Island. The areas of Class 2 and 3 agricultural land which form the basis of Island farming are already known and will soon be more exactly defined with the completion of the new soil survey. Similarly the high quality recreational areas, the important wildlife habitats, the rare fragile landscapes, the outstanding views, the most productive forestry areas, are all known, and already form the basis of a variety of programs within the government service.

A very tentative 'first run' at this plan has already been prepared from C.L.I. data (See Figure 9). Perhaps a month would be required for the adjustment and generalization of this data by government planning staff to allow for such things as the inclusion of Class 4 tobacco and blueberry soils with prime agricultural areas; or say the elimination of small isolated patches of high quality agricultural soils which are too limited or too isolated for modern agriculture.

This province-wide generalized land use plan should be released immediately as a printed colour map for general use and distribution as a general guideline to land use and development. Fears that such a plan would disclose resource secrets or escalate recreational property values are largely groundless since printed capability maps for agriculture, forestry, recreation and wildlife are already available in individual format from the Queen's Printer.

The plan would, in fact, say very little new to most Islanders; but it would act as a loose zoning plan and authenticate what, in broad terms, is possible and desirable in the long term utilization of the Island's land resource. It should help to explain and support land use decisions already being made by the Land Development Corporation and by other government agencies, and allow the local community to view its land base in the context of over-all provincial land use objectives. *But perhaps most important it will establish a necessary base for the participation of local residents in the more detailed planning of their own communities.*

PLANNING GUIDELINES - AGRICULTURE

Land Requirements

It is beyond the scope of this Commission to undertake a detailed analysis of present and future prospects for the Island farm industry. The complex maze of Federal government agricultural policies which have such far-reaching implications for Island agriculture form a study in themselves. However, the Commission has been told on numerous occasions that there are strong reasons to believe that the farm industry can be strengthened, maintained and expanded on Prince Edward Island. It is also aware of the central role of agriculture within the overall thrust of the Province's current economic development policy.

The Commission is therefore persuaded that in the interests of the continued growth and prosperity of this industry and the Island economy as a whole, it is important to guarantee continued agricultural access to Class 2f, 3w, 3m, 3ms and 3t soils. These soils should be indicated as prime agricultural use areas on the general land use plan, with the guideline that they be retained wherever possible for agricultural use.

It is only too easy to justify alternative uses for this agricultural land base on the basis of the present surplus of approximately 110,000 cleared acres of Class 2 and Class 3 agricultural land. But, the fact is that without these soils the Island economy would be in serious distress. Even the growing tourist industry is based on large measure on the aesthetic of an *agricultural landscape*.

The Commission feels that the preservation of this high quality, cleared resource base for agriculture is a matter of paramount importance. Future opportunities for agricultural growth are likely to be passed over if this land has to be cleared again from trees.

Conservation

In addition to preserving the agricultural land resource in terms of space, it must also be conserved from serious soil erosion and from needless deterioration of its aesthetic or scenic qualities.

The Commission is convinced that the continued clearing of trees from stream banks, and the removal of too many hedgerows has aggravated these problems and is not necessary to the accommodation of modern agricultural equipment.

It is recommended that government might assist in controlling these negative trends through assistance with tree planting programs, starting with those landowners who are interested and receptive. Ideally 150 feet should be retained in grass, shrubs or trees along all stream banks, and the retention and/or planting of occasional hedgerows should also be encouraged.

The Commission is also convinced that highway construction practices have seriously aggravated the erosion of Island soils through failure to plant ground cover on fresh cut ditches, and through the diversion of ditch waters across agricultural fields. A recent

Department of Energy, Mines and Resources report, "Roadside Erosion and Resource Implication in P.E.I.", No. 48, 1971, indicates that both the erosion and the siltation which result from these practices are extremely costly.

Agricultural Education

With agriculture playing such a central role in both the economy and ethos of Prince Edward Island, it strikes the Commission as logical that the subject should be dignified with a much higher status in the educational system. Some basic understanding of the processes, problems, and management complexities of modern agriculture is important not only to those who plan to enter the industry, but also to all those who plan to spend their lives in Prince Edward Island.

Only five high schools were offering agricultural courses in the 1972-73 academic year, with a total enrolment of 196 students --- 98 of them in Morell.(a) Immediate consideration should be given to making the offering of agricultural courses universal in the Island high school system, quite possibly coupled with the provision of actual farm laboratories. The offering of practical agricultural courses in the vocational schools on either a fulltime or a part-time basis might also assist in the upgrading of farm skills.

PLANNING GUIDELINES - RECREATION

Land Requirements

Practically every forecast of North America urban growth predicts that more than 85 per cent of total population will be resident in urban environments by the year 2000. Even in rural Prince Edward Island as many as 42,780 of its total 111,640 people were classified as 'urban' in the Census of 1971. As our cities grow, the rural landscape is viewed increasingly through urban eyes which see it less as a source of food and newsprint, but more as a place for recreation and repose.

The ownership by non-residents of 92,000 acres, or 6.5% of the Island's surface is a clear reflection of this growing urban demand. Since there is clearly a limit to the number of individuals who can be accommodated through private landholdings, there is an obvious need to preserve additional public spaces, particularly beaches, for a variety of outdoor recreational pursuits. There is a parallel need for vigilance in preserving unique and fragile lands, and special wildlife habitats from excessive use and destruction.

The General Land Use Plan should be as specific as possible in its designation of those very special areas (some are too small to show) which are earmarked for eventual government acquisition. These designations should include areas for public beaches and for the preservation of unique and fragile lands, and special wildlife habitats. Moreover, it should err on the side of designating too much rather than too little. To delay the protection of these areas in the face of current pressures on Island land is to 'play with fire'. It is also mandatory to the genuine participation of local citizens in the planning of their own communities.

Federal Involvement

It seems obvious that the Federal Government must become more involved in the whole area of outdoor recreation. Not only is it allied to new national environmental objectives and concerns but it also requires the provision of uses which are fixed in space to an increasingly mobile public. The major pressures on Island beaches are created not by Islanders, but by summer visitors.

Traditionally, Federal participation in recreational lands has been confined to the preservation of outstanding natural landscapes through a national chain of large wilderness National Parks. While for much of the nation this concept has proved to be of outstanding merit, it has doubtful application in the densely settled rural landscape of Prince Edward Island. Aside from the beaches, it might well be argued that it is the Island's agricultural landscape which is most deserving of preservation. The concept of preserving rural landscapes as a national cultural resource is well known to a number of western European states and should be worthy of consideration in the Island circumstance, especially in cases where this cultural landscape adjoins sand beaches which are also known to be unique.

PLANNING GUIDELINES - FORESTRY

The expanding forest acreage which now covers virtually half (47%) of the Island is capable of producing very much more, and certainly its productivity should be improved. However, this can only happen over the long term and, to be economic, will require management in very much larger blocks.

There are three possible methods to achieve these larger management units:

(1) government purchase;

(2) individual purchase; or

(3) co-operative ownership and/or forest management groups.

A major Government purchase program must be rejected on the basis of cost and general policy. A good case can be made for a limited amount of purchase for the demonstration of management techniques. The Land Development Corporation might with the good advice of foresters pick up scattered holdings and should withhold the woodlots from lands resold to farmers, to assist in rounding out the management blocks of co-operative forest management groups.

Serious attempts at individual purchase for forest management have not been attempted on any significant scale to date, and seem unlikely in the future.

The third co-operative alternative seems the most likely to succeed. A number of successful precedents already exist in the Province of Quebec and have been examined by Island foresters. The social objectives are also sound since they encourage local involvement and control, as well as the return of incomes to the local community. The cost to government in land would be minimal, freeing its financial and staff resources for more productive efforts in supportive research and management assistance.

Areas with the potential for forest management should become increasingly apparent with the preparation of the general land use plan. Local efforts to form co-operative management units should be stimulated through the involvement of local forest owners in land use planning activities at the community level. The minimum maintenance requirement recommended in this report for the holdings of all corporations, non-residents and non-occupiers, should augment the acreage available for co-operative woodlot management units.

To encourage the utilization of sawlogs in the production of good quality Island-sawn lumber, it is recommended that lines of credit be extended to local sawmill operators so as to enable them (1) to compete with pulpwood buyers in the roadside purchase of logs, and (2) to modernize facilities and equipment in their mills.

THE COASTAL LAND USE PLAN

The Need

The quality of Island shorelines in terms of capability for outdoor recreation is unusually high. Of the total 688 miles of more exposed salt water shoreline, as much as 57 per cent falls within Canada Land Inventory capability Classes 1, 2 and 3, having an exceptionally high capability for family bathing and beach activities.(a) Some 241 miles of this prime recreational shoreline falls within Classes 1 and 2 representing more than one-half (57%) of all such coastlines in the Maritime provinces. Since Canada contains very little warm salt water shoreline outside the Maritime area, Island beaches represent a truly important *national* resource.

The dwindling supply of shoreline accessible to the public has become a matter of continental concern. Measures to preserve public shoreline space and access, and to raise the standards of private shoreline development have already been set in motion in several Canadian provinces (e.g. British Columbia, Manitoba and Ontario) and in many of the U.S. coastal states. Inevitably as controls are strengthened elsewhere, so will the pressures intensify on Island shorelines.

At the end of 1972, non-residents already owned more than 100 miles or nearly 10% of the Island's 1,141 miles coastline (including tidal estuaries), with a disproportionate percentage fronting on high quality sand beaches. Also, the rate of shoreline summer cottage lot subdivision, largely by Island landowners, has reached alarming proportions.

As a result of both these pressures the access of the general public to shoreline has become an increasingly nettlesome problem. At every public hearing of the Commission it was suggested that the right of public access should be reasserted over former 'mud roads' and other forgotten public rights of way to the shore. The Commission feels that access to ocean shoreline is the right of all Canadians. It not only concurs with the public's suggestion but feels that still other beach access points may have to be opened in areas where they are needed most. In cases where roads are opened, they should be combined with back-up parking ares within reasonable walking range, and provisions made for periodic clean-up and inspection.

Preparation

The unique value of Island shoreline both to the province and to the nation, dictates an urgent necessity for the preparation of a coastal land use plan. This plan should include all shorelands touched by tidal waters, and within a coastal strip of at least one-half mile in depth and up to one mile in depth in special cases. The plan should designate, possibly at the 1:50,000 foot scale:

(1) areas for public beaches, preservation of unique and fragile lands, wildlife habitat;

(2) areas of present and possible land subdivision for seasonal or year-round homes;

(3) points of public access to the shore; (4) areas which should be retained in their present or natural state.

If at all possible, this plan should be completed within the next six months. To delay on grounds of inadequate information would be to delay indefinitely.

Since the imposition of such a plan is not likely to be entirely popular with the general public, it is important to provide an opportunity for its review and revision at the local community level. This should most logically happen within the context of local citizen participation in the preparation of more detailed community land use plans.

OTHER COASTAL LAND USE CONSIDERATIONS

Research

The fragility of Island shorelines in the face of ongoing erosion by wave and wind, means that their management must be particularly sensitive to natural processes. Much more needs to be known, and quickly, about the morphological and ecological processes at play in this coastal environment if it is to receive the intelligent management which it deserves in the face of continued sand removal and rapidly increasing recreational use pressures. This subject also presents itself as a logical candidate for further federal involvement and support.

Sand Removal

Although permits are required for the commercial removal of Island beach sands, the process is very difficult to monitor, and little is really known about its long-term implications. The movement of sand by longshore currents along Island shorelines is far from completely understood. Since the Commission has been assured that sand of superior quality for concrete and asphalt can be imported by rail from the Wentworth Valley at comparable end cost,(a) it seems unnecessarily risky to continue the commercial mining of Island beaches, at least until such time as further research can be brought to bear on the matter.

Cottage Lot Subdivisions

In planning shorelines for recreational uses there must be a scale of priorities with respect to public requirements. The privateness and low utilization of the summer cottages which accommodate very few people in relation to the amount of shorefront which they consume, place them well down on the priority scale, especially in view of the sizeable areas of undeveloped subdivision which have already removed significant acreages from any use whatever. Further, if it is in the Island's interest to allow the sale of cottage lots to non-residents, then it must also be important to ensure that cottages are actually erected. While 3,870 cottage lots were approved during 1968-71, only 569 building permits were issued. Quite aside from the aesthetic considerations of landscape and the increased expense of servicing scattered cottages, the returns from bare lots in labour and taxes are slim indeed.

There is also a real need for improved site design regulations. The rate of erosion on Island shorelines suggests a liberal setback from the bank, say 200 feet, provided by the subdivider for his constituents. This would preserve access to the beach for all cottagers and provide space for picnicking and other recreational pursuits. It would also allow for the development of cottage lots in depth, yielding greater return to the developer while conserving the limited shore frontage available.

Further, there are legal and administrative requirements to ensure the clarity and security of land transactions. These should include the pinning of lots, the payment of taxes, and possibly the preparation of staging plans and the posting of performance bonds by the subdivider before registering.

Still further, there is the consideration of improved standards for sewage and waste disposal, roads and other services, and the establishment of formulas to cover initial installation costs and long term maintenance.

Provincial Park Design

Because of overcrowding in provincial campgrounds, and the parallel problem of beach access, the Commissioners feel that future provincial parks should keep trailers and campgrounds well back from the shore, leaving areas adjacent to the beach free for the day use activities of both tourists and resident Islanders. Perhaps the Province should leave future expansion in camping facilities to the private sector.

Consideration should also be given to the provision in inland areas of public walking and cross country ski and snowmobile trails together with simple shelters and facilities, to provide an outlet for new recreational pursuits and to ease pressures at the beach.

COMMUNITY PARTICIPATION AND MORE DETAILED LAND USE PLANS

Arguments as to whether public or community participation is desirable or undesirable have become largely academic. Recent trends all over North America indicate that public demands far greater participation in community decision-making are here to stay. The feelings expressed repeatedly to this Commission at the public hearings suggest that these demands are also very much alive in Prince Edward Island.

It is interesting to speculate on the reasons for these participatory demands as outlined in a recent working paper "Citizen Involvement" prepared for the Ontario Committee on Government Productivity:(a)

- rising levels of education;
- increasing size, complexity and pervasiveness of government;
- the "narrow rationality" of institutional decision making;
- the seeming inadequacy of traditional political pro cesses;
- the beginnings of what appears to be a major cultural shift;
- the increasing rate of change;
- the active response of government.

In P.E.I. the rationalization of schools and other public services is a necessary step in increasing the quality and efficiency of government services. But at the same time it has left a very real vacuum in local communities where the administration of these very same services traditionally formed a focal point of community life. It is reflected in a general feeling of alienation perhaps best articulated by a resident of Tignish, "We feel we no longer have any influence on government decisions affecting our community. And *it's not just the Campbell government, it's any government*".

The Commission feels that the land use planning process provides an important and necessary reason for the participation of community groups. A concern for land use rather than land ownership, and the need for some measure of land use planning has been stated in virtually every brief that the Commission has received. At the same time experience has demonstrated elsewhere in the Atlantic Region that land use plans which do not involve the local community, especially in rural areas, are of very little value since they are almost impossible to implement. A good working land use plan is rather an *on-going land use planning process* in which local citizens are directly involved.

In other words, planning is a process which brings government policies and programs down to the community level where the people can take an active part in discussing, deciding and even in implementing those things which must directly affect their own community.(a) Successful participatory planning is also a process which involves and relates directly to local community leaders and elected officials, providing an organized and ongoing communication link between the community and the provincial decision-making process. In a very real sense, the public hearings of this Royal Commission might be regarded as the first stage in this process. The expanded participation of local citizens on a more organized community basis is fundamental to the successful implementation of most of the recommendations contained in this report.

A Framework for Local Participation

Structures for participation and decision making by communities might most logically begin on the basis of multiples of the old school districts which hold a common interest in the social and economic well being of their area. The Rural Development Council has prepared a tentative map of possible community boundaries (See Figure 10), indicating that there are approximately 30 such units on the Island which might constitute feasible and workable groups. It should be emphasized that these boundaries are tentative, and should be allowed to shift according to the wishes of the local residents.

To quote again from the Ontario working paper, "The fundamental organizational unit for implementing participation should be collegial, face to face, problem-solving group. It should be large enough to include individuals with perspectives and expertise to deal with the problem at hand, but small enough to ensure that each participants' contribution would be substantial and meaningful".

Government Support to Local Participation

During the course of the hearings it was clearly indicated by the public that effective participation in this local planning and decision-making process would require:

(1) the guidelines of a general Island-wide land use plan as suggested above, and

(2) the help of government experts and technicians in their on-going examination and discussion of the issues.

The Commission would also suggest that the Rural Development Council might play an effective role as catalyst for the process at the community level.

Although it is unlikely and perhaps undesirable that all of these community units organize and emerge simultaneously, it seems certain that they cannot all be serviced by technical and professional staff located in Charlottetown. There will therefore be an early need for the location of at least some technical staff in the regional provincial government services centres, existing or proposed. Recent experience in Montague already demonstrates this requirement.

Local Functions and Decision Making Powers

Subject to certain province-wide conditions, these community groups should be given real decision making powers within their own area. These powers might include:

- the right to limit subdivision activity in amount and location;
- the right to decide their own subdivision standards above the provincial minimum;
- the right to require minimum levels of use, protection or maintenance of land;
- the obligation to prepare and recommend suggested longrange plans for land use including areas for parks, residential and other uses.

Over time, this would mean the delegation of many of the powers of the Provincial Planning Board to more local groups.

PRINCE EDWARD ISLAND
POSSIBLE COMMUNITY BOUNDARIES

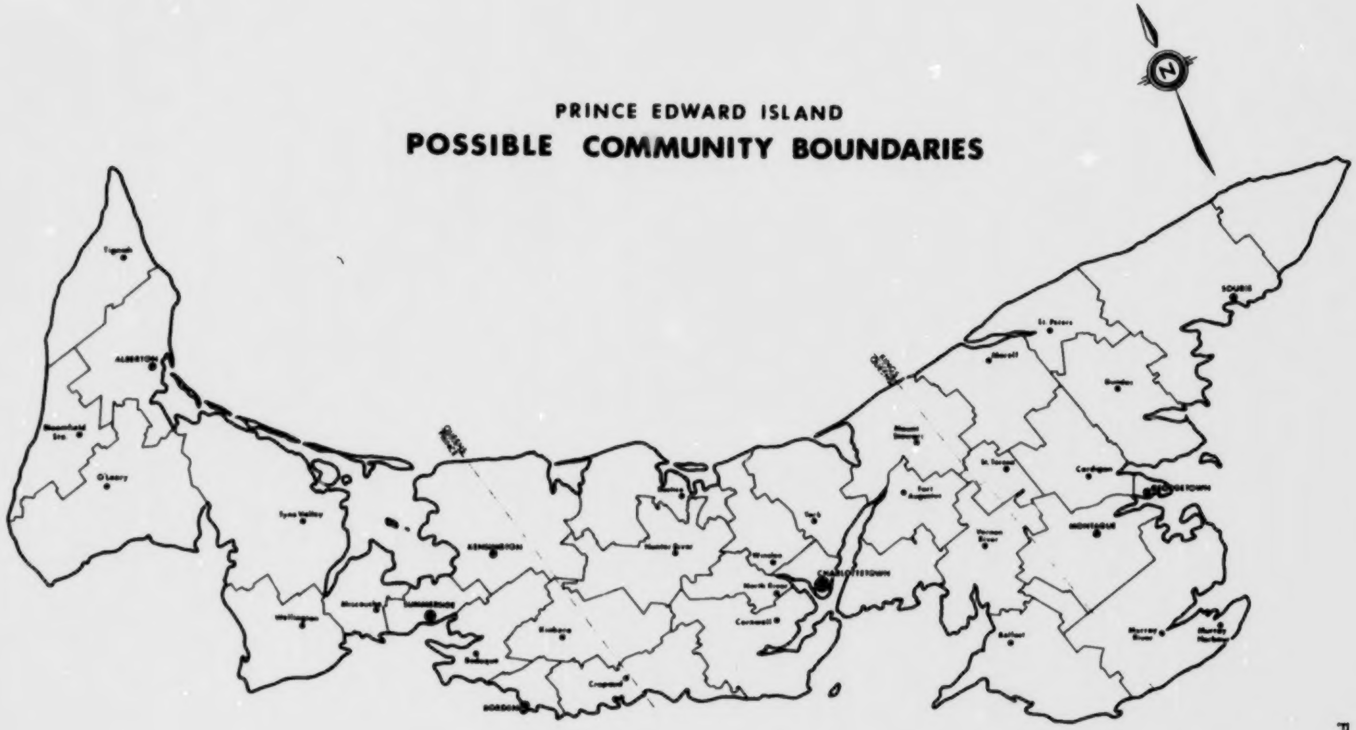

N
Tignish
ALBERTON
Bloomfield Sta.
O'Leary
Tyne Valley
Wellington
Miscouche
SUMMERSIDE
KENSINGTON
Bedeque
BORDEN
Kinkora
Crapaud
Hunter River
Winsloe
North River
Cornwall
CHARLOTTETOWN
York
Mount Stewart
Fort Augustus
St. Teresa
Vernon River
Morell
St. Peters
SOURIS
Dundas
Cardigan
GEORGETOWN
MONTAGUE
Belfast
Murray River
Murray Harbour

FIGURE 10

Scale in Miles

10 0 10 20

Graphics By
Maritime Resource Management Service
Amherst, N.S.
1973

CORPORATE AND NON-RESIDENT LANDHOLDERS

The most immediate reason for the appointment of this Commission was the growing concern of Island government over the impact on the Island community of major increases in the acreage of non-resident landholdings. This concern was echoed in the public hearings, more particularly with respect to the larger corporate landholders.

The Corporation

The family farm corporation and the co-operative have been important and respected elements in the Island community for many years. However, the larger corporate landholders, particularly those dealing in speculative land purchase or whose intentions with respect to land are unclear, represent an alien, impersonal and somewhat mysterious element in the local community. The fears and apprehensions which this engenders are not unjustified, for corporate owners do hold certain advantages over individual landholders.

- Wealth - may mean better possibility of obtaining credit and/or ability to farm and sell produce at a loss.
- Income tax advantages.
- Ability to disguise true ownership.
- Longevity - staying power. The corporation is inhuman; it does not die.

More important, the corporation poses a very real threat to the Island's cherished sense of community and culture, in its differing attitudes toward laws, customs, political institutions, and in its immunity to local social pressures.

Although corporations are required to give information on intended activities at the time of their incorporation or of their registration in the province, such information is very vague and gives little true understanding of intended pre- and post-development activities. Consequently, it is not possible to analyze the P.E.I. situation precisely, let alone to obtain enlightening comparisons from other provinces. This situation could be improved through:

- amendments to the Registry Act making the registration of all documents relating to interests in land or in the use of land compulsory;
- encouraging a more concise statement of corporate objectives upon incorporation, or of any changes in these objectives through supplementary letters patent;
- broadening the base of information required in applying for incorporation, and in the filing of annual company returns to include details on the real and equitable ownership of the company;
- providing checks to discourage attempts to obscure operations or to circumvent land use controls;

- instituting mechanisms in government to co-ordinate and cross reference information obtained on corporations.

In order to bring non-resident corporations dealing in land into closer touch with Island community, they should also be required to establish an office in the Province, containing the same information found in the head offices of Island companies, and filing the same information in annual returns as is required of domestic companies.

At the same time it is important to avoid undue hardship: (1) to family farm corporations which play a prominent role in the continuation of Island family farms; (2) to community-group associations involved in the purchase of land for community management; or (3) to standard co-operatives which may have an important role to play in the future management of Island forests. The encouragement of such groups is very much in the Island's interest and might best be handled through the creation in law of three new types of co-operative associations.

But with the exception of these three types of association, *the Commission strongly recommends the imposition of a 200-acre ownership restriction on all partnerships and companies, both foreign and domestic, without the consent of the Lieutenant-Governor-in-Council.* This represents a return to the 200-acre limitation which served the Province for more than 100 years. Moreover, the restriction placed on such companies should include parents, subsidiaries, and any associations affiliated with them.

Private Non-Resident Landholders

The right of the private non-resident to acquire land presents a very different case from the corporations just discussed. Particularly since a large percentage of non-residents are former Islanders or are related to Island residents.(a) Ties between the Island and the New England or Boston States stretch back even farther in history than those with central Canada where so many Islanders have gone in recent years. Opinions expressed in the public hearings indicated a very real reluctance over the imposition of tougher acreage restrictions, as well as considerable soul searching over the acreage limitations that now exist.

The Commission agrees that in the case of non-resident Canadians the present restrictions run counter to the larger concept of Canadian nationhood. The question of its constitutional implications with respect to non-resident Canadians is contested as well.

But beyond the constitutional issue is the question of equality of treatment of petitioners under the present legislation. Each application requires individual consideration. No matter how fair and unbiased each considered decision may be, there will always be some who will question it, particularly in the absence of any official land use plans or planning guidelines. The present legislation also places the Province under certain pressure to acquire at equal price those larger properties for which nonresident purchase has been refused.

For all these reasons, the Commission recommends that the present acreage restrictions on non-resident land purchases be removed. This, with the important exception of corporate land holders is outlined above.

However, it is vital that the present restrictions should not be removed until such time as alternative land control measures are in place. At a minimum these should include: (1) the preparation and adoption of a coastal land use plan, as suggested in Chapter VI above, together with the introduction of improved subdivision requirements, and the establishment of appropriate staff and procedures to ensure that the plan can be properly enforced; (2) the introduction of a minimum maintenance requirement on the landholdings of all corporations, non-residents, and non-occupiers of land, as recommended in Chapter IV above; and (3) the enactment of the necessary legal machinery to permit the degree of community participation envisaged in this report.

The question of higher taxes on non-resident landholdings was raised frequently in the hearings and was tentatively recommended by this Commission in its interim report. It is unlikely that such a move would greatly curtail the rate of non-resident purchase, nor reduce the pressure for shoreland acquisition. Rather, it should be regarded as a means of augmenting tax returns to the provincial treasury.

The Commission has been advised that the imposition of a higher non-resident tax rate might well be regarded as discriminatory, particularly in the case of non-resident Canadians. Moreover, it seems unlikely to instill the newcomer with a sense of community belonging.

In the case of alien non-residents, a certain justification for a higher tax rate can be made on the grounds that the alien does not contribute to Canadian income tax revenues, which in turn assist in covering the cost of a variety of public services which he uses while in Prince Edward Island. However, in view of the minimum maintenance requirement recommended for all non-residents, as well as the imposition of substantially higher taxes on undeveloped lots within the coastal zone, (see Recommendations 14 and 18), the Commission has modified its earlier recommendation with respect to this matter.

THE URBAN SCENE

Ribbon Development

As elsewhere on the continent, the Island is witnessing a gradual shift of population away from the land and into urban centres. The major increase in rural non-farm population from 37,947 in 1966 to 47,730 in 1971 indicates that this trend is likely to continue. But as is already apparent in the scattered ribbon development, particularly along paved highways focusing on Summerside and Charlottetown, many of the people involved in this population shift have relocated outside established urban centres. The impaired efficiency of Island highways, the serious conflicts already arising with respect to agricultural smells, and the negative effects on the appearance of the Island landscape, are but three of the problems which surround these linear housing developments in rural areas.

While it is undoubtedly true that many Islanders prefer a rural setting, it is also true that the modest incomes of many new home builders allow no other choice. With lots selling for a few hundreds of dollars in the rural fringe of urban centres, but for several thousands within, ribbon development seems certain to continue. If this trend is to be curtailed without restricting access to new home ownership, the costs of locating within urban municipalities will have to be substantially reduced. This is most likely to happen through the provision with government assistance of low cost land and services. Through the same instruments, new home construction might be encouraged in smaller villages within commuting range. This would have the added advantage of breathing new life into the small centres which play such an important role in rural Island life.

Charlottetown

Of much greater concern to the Commission is the Charlottetown urban area, the traditional focal point of Island life and government and a special place in historic and national terms. The essential character of its urban core is presently without the plans, the funds, or the necessary government structures to secure this special role. Development on the fringe of the city is further complicated by a six-way split in its municipal jurisdiction (four incorporated villages; Parkdale, Sherwood, Bunbury and Southport: two local improvement districts; West River and North River).

To quote from the brief presented to the Commission by the City of Charlottetown:

> "The planning aspect of developing a land use policy to serve the Greater Charlottetown Urban Area is provided for in existing planning legislation. It is fully possible to create a vision for the best kind of urban environment for the Area; but, it is the implementation of any such land use policy which deserves, in the opinion of the Board, special consideration at this time.
>
> So many land use policies adopted at the local level stop short at traditional land use plans implemented by often highly legalistic bylaws and regulations. In most cases, land use plans simply confirm established land use patterns while making allowance for certain expansion of uses based on projected past trends. And, in most cases, these plans are "implemented" solely by zoning bylaws, subdivision regulations, and the like. Too frequently, at the regional level, the member units are left to administer their part of the plan and their own regulations independently. Most important of all, traditional plans of this sort seldom call for the spending of money because local governments are known always to be in the position of finding it ever more difficult to provide even basic services.
>
> Because money is in short supply, so are the management and technical capabilities which are needed to implement any integrated and farsighted land use policy for a regional urban community. *In the present situation, therefore, land use policies are inadequately backed with cash, and being so deprived they can be little more than regulatory, passive and exceedingly frustrating to everyone.*
>
> Money (or other assets, including land) is essential if any meaningful land use policy is to be implemented at the regional scale. And, besides money, some regional developmental mechanism, capable of undertaking certain actions independently from local government council interference, yet having local government representation, is needed."

A plan for the redevelopment of the Charlottetown area is now in the final stages of preparation by consultants. Concurrently, a blueprint for a Charlottetown Area Development Agency, a co-operative development mechanism for municipal and developmental planning in the Charlottetown area, has been prepared and is under discussion by the various councils within the metropolitan area.

However, the Commission agrees that no matter how able and excellent the plan and the agency may be, little is likely to be accomplished without a major infusion of funds, over and above those derived from the municipal tax base. There seems little doubt that these will have to come from federal and provincial sources.

In the interest of sustaining the central and integral role of Charlottetown in the Island economy and way of life to enable future development in keeping with the aesthetic and historical importance of its urban core, the Commission recommends that the City be considered for very substantial provincial financial assistance.

Summerside presents a somewhat similar case but on a very much smaller scale.

RECOMMENDATIONS

1. Provincial government planning staff must, as soon as possible, prepare in colour a general province-wide land use plan at the 2 miles to 1 inch scale. This plan might well be printed and released immediately as a guideline to local community planning efforts and as a basis for broad government decisions with respect to land.

2. The Province should designate without delay those public beaches, unique and fragile lands, and special wildlife habitats which it plans to acquire and/or preserve in the long term. Further, it should err on the side of designating too much rather than too little in each of these categories.

3. Additional access points must be opened and/or reopened to the beach. Where access roads are opened, they should be combined with nearby back-up parking area, and provision made for periodic clean-up and inspection.

4. Before the spring of 1974, a coastal land use plan must be prepared by the Department of Environment and Tourism for a coastal strip of at least one-half mile in depth, and up to one mile in depth in special cases, along the entire Island shoreline touched by tidal waters. This plan should designate:
    - (a) areas for public beaches and for the preservation of unique and fragile lands and wildlife habitat;
    - (b) areas of present and possible land subdivision;
    - (c) points of public access to the shore, both present and proposed;
    - (d) areas which should be retained in their present or natural state.

5. The Province should state its intention to make it truly possible for communities to participate in decisions that affect land use.

(a) Local planning areas could be based on the old school districts units and might possibly consist of multiples of the old school districts, at the choice of the concerned community.

(b) Subject to certain province-wide conditions these community groups should be given real decision-making power in their area.

e.g. - the right to limit subdivision activity in amount and location;

- the right to require higher standards than the minimum set by the provincial government with respect to:
  - (a) land subdivision
  - (b) minimum levels of use, protection or maintenance of land.
- the obligation to prepare and recommend suggested long-range plans for land use including areas for parks, residential and other uses.

6. In addition to preparing the general land use plan outlined above, the Province should encourage and support more detailed planning at the local level through:

   (a) the provision of technical and professional planning advice;

   (b) the provision of encouragement and support to the Rural Development Council as a catalyst for community involvement in planning process.

7. Class 2f, 3w, 3m, 3ms and 3t soils should be indicated as prime agricultural use ares on the general land use plan, with the guideline that they be retained wherever possible for agricultural use.

8. a. The Provincial Highways Department should:

   (1) take steps to control the erosion of highway shoulders through better design and through continued reseeding practices;

   (2) improve the design of highway ditches and run-off control so as to reduce the erosion of farmers' fields.

   b. Assistance should be offered to farmers by way of seed or ground cover planting along denuded streams.

9. Consideration should be given to the compulsory offering of practical agricultural courses in both high schools and vocational schools.

10. The provincial government should encourage and help woodlot owners who will enter into cooperative woodlot management arrangements through:

    (a) assistance in the preparation of woodlot management plans and the provision of technical advice;

    (b) placing adjacent Crown lands, if any, in the woodlot management unit;

    (c) instructing the Land Development Corporation to not sell woodland that it acquires, but to hold for eventual inclusion in woodlot management units.

11. Lines of credit should be extended to small Island sawmills to encourage the production of better quality lumber, and to enable competition with pulp dealers in the roadside purchase of logs.

12. Forms other than the traditional National Park concept for federal government assistance in the creation and maintenance of public recreational space should be explored.

13. Federal Government assistance should be sought for further coastal research as a basis for the long-term preservation and management of the Island's fragile coastline.

14. Developers of future cottage lot subdivisions or owners of lots within the coastal zone should be penalized with substantially higher taxes on those lots which remain undeveloped for more than three years after acquisition date, or for three years after the introduction of the legislation.

15. Much improved subdivision design and servicing regulations should be introduced, including:

    (a) a minimum 200-foot setback from the bank;

    (b) the pinning of lots and the payment of taxes prior to registration of the subdivision plan;

    (c) improved standards for sewage and waste disposal, roads and other services, together with the establishment of formulas to cover their initial installation costs, and long-term maintenance.

16. Future provincial parks should confine day use activities to areas near the shore.

17. Public walking and cross country ski and snowmobile trails together with simple shelters and facilities should be provided through interior areas, to provide an outlet for new recreational pursuits and to ease pressures at the beach.

18. A minimum maintenance requirement should be placed on the landholdings of the Land Development Corporation, corporations, alien non-residents, other non-residents, and nonoccupiers (whether residents or not).

19. In order to improve the understanding of corporate pre and post development activities with respect to land, the following steps are recommended:

    - amendments to the Registry Act making the registration of all documents relating to interests in land or in the use of land compulsory;

    - encouraging a more concise statement of corporate objectives upon incorporation, or of any changes in these objectives through supplementary letters patent;

    - broadening the base of information required in applying for incorporation, and in the filing of annual company returns to include details on the real and equitable ownership of the company;

    - providing checks to discourage attempts to obscure operations or to circumvent land use controls;

- instituting mechanisms in government to coordinate and cross reference information obtained on corporations;
- require all corporations to establish an office in the Province, containing the same information found in the head offices of Island companies, and filing the same information in annual returns as is required of domestic companies.

20. A limitation of 200 acres should be placed on the landholdings of all corporations - held directly or indirectly without the consent of the Lieutenant-Governor-in-Council.

21. With the exception of corporations and partnerships, the present acreage and shore frontage restrictions on non-resident land purchases be removed at such time as:
    - an enforceable coastal land use plan has been prepared, accompanied by improved subdivision requirements, as recommended under 4, 14 & 15 (above);
    - a minimum maintenance requirement has been introduced, as recommended under 18 (above);
    - the necessary legal machinery has been enacted to enable a large degree of community participation, as recommended under 5 and 6 (above).

22. Attempts to curb the ribbon development of housing along Island highways should be strengthened through the provision of low cost land and services within established urban areas.
23. To sustain the central and integral role of Charlottetown in the Island economy and way of life, and to enable future development in keeping with the aesthetic and historical importance of its urban core, the City should be considered for very substantial financial assistance from the provincial government.

FOOTNOTES TO TEXT

1.3

a. Raymond, McClellan & Rayburn *Land Utilization in Prince Edward Island*, Memoir 9, Geographical Branch, Department of Mines and Technical Surveys, Ottawa, Queen's Printer, 1963, p. 92 - 93.

1.4

a. The Land Registration and Information Service, jointly funded by the Federal Department of Regional Economic Expansion and all three of the Maritime Provinces, now operates as an agency of the Council of Maritime Premiers. It has as its ultimate objective, the establishment of a computerized land titles bank containing geographical coordinate descriptions for all land holdings in the region. Although exact coordinate descriptions have not yet been established for all Island landholdings, all properties have been mapped on airphotos and large scale planimetric maps. All properties have also been assigned property numbers which together with related information (land owner's name, acreage, land valuation data, etc.) are maintained and continuously updated in a computer bank.

b. W. Phillips & others, *Extent and Implications of NonResident Ownership on Prince Edward Island*, confidential paper presented to the legislative special committee of inquiry "the Committee on Land Acquisition and Land Transfer to Non-resident Corporations and Private Individuals", February, 1971.

c. The capability ratings of land for agriculture, forestry and recreation which are referred to in this report are based on information from the Canada Land Inventory, a national resource mapping program now complete for the Province of Prince Edward Island. For each of these potential uses of the resource base all land has been mapped in one or other of seven capability classes, ranging from Class 1 with only very minor use constraints, to Class 7 with constraints so major as to render the land virtually incapable of the use in question. Simple descriptions for the 7 agricultural capability classes are as follows:

CLASS 1 - SOILS IN THIS CLASS HAVE NO SIGNIFICANT LIMITATIONS IN USE FOR CROPS

The soils are deep, are well to imperfectly drained, hold moisture well, and in the virgin state were well supplied with plant nutrients. They can be managed and cropped without difficulty. Under good management they are moderately high to high in productivity for a wide range of field crops.

CLASS 2 - SOILS IN THIS CLASS HAVE MODERATE LIMITATIONS THAT RESTRICT THE RANGE OF CROPS OR REQUIRE MODERATE CONSERVATION PRACTICES.

The soils are deep and hold moisture well. The limitations are moderate and the soils can be managed and cropped with little difficulty. Under good management they are moderately high to high in productivity for a fairly wide range of crops.

CLASS 3 - SOILS IN THIS CLASS HAVE MODERATELY SEVERE LIMITATIONS THAT RESTRICT THE RANGE OF CROPS OR REQUIRE SPECIAL CONSERVATION PRACTICES.

The limitations are more severe than for Class 2 soils. They affect one or more of the following practices: timing and ease of tillage; planting and harvesting; choice of crops; and methods of conservation. Under good management they are fair to moderately high in productivity for a fair range of crops.

CLASS 4 - SOILS IN THIS CLASS HAVE SEVERE LIMITATIONS THAT RESTRICT THE RANGE OF CROPS OR REQUIRE SPECIAL CONSERVATION PRACTICES, OR BOTH.

The limitations seriously affect one or more of the following practices: timing and ease of tillage; planting and harvesting; choice of crops; and methods of conservation. The soils are low to fair in productivity for a fair range of crops but may have high productivity for a specially adapted crop.

CLASS 5 - SOILS IN THIS CLASS HAVE VERY SEVERE LIMITA TIONS THAT RESTRICT THEIR CAPABILITY TO PRODUCING PERENNIAL FORAGE CROPS, AND IMPROVE MENT PRACTICES ARE FEASIBLE.

The limitations are so severe that the soils are not capable of use for sustained production of annual field crops. The soils are capable of producing native or tame species of perennial forage plants, and may be improved by use of farm machinery. The improvement practices may include clearing of bush, cultivation, seeding, fertilizing, or water control.

CLASS 6 - SOILS IN THIS CLASS ARE CAPABLE ONLY OF PRODUCING PERENNIAL FORAGE CROPS, AND IMPROVE MENT PRACTICES ARE NOT FEASIBLE.

The soils provide some sustained grazing for farm animals, but the limitations are so severe that improvement by use of farm machinery is impractical. The terrain may be unsuitable for use of farm machinery, or the soils may not respond to improvement, or the grazing season be very short.

CLASS 7 - SOILS IN THIS CLASS HAVE NO CAPABILITY FOR ARABLE CULTURE OR PERMANENT PASTURE.

This class also includes rockland, other non-soil areas, and bodies of water too small to show on the maps.

2.2

a. Raymond and Rayburn *Land Abandonment in Prince Edward Island*, Geographical Bulletin No. 19, Dept. of Mines and Technical Surveys, Ottawa, P. 79 - 80.

2.3

a. Commercial farm distribution plotted on the basis of information solicited in interviews conducted by the Department of Energy, Mines and Resources during 1967 68 with all Island landowners holding more than 10 acres.

b. The Class 2 and 3 soils are largely contained within the agricultural areas as outlined on the generalized land use plan, Figure 9.

2.6

a. The seven-fold land capability classification for outdoor recreation may be briefly described as follows:

CLASS 1 - LANDS IN THIS CLASS HAVE VERY HIGH CAPABILITY FOR OUTDOOR RECREATION.

Class 1 lands have natural capability to engender and sustain very high total annual use based on one or more recreational activities of an intensive nature.

Class 1 land units should be able to generate and sustain a level of use comparable to that evident at an outstanding and large bathing beach or a nationally known ski slope.

CLASS 2 - LANDS IN THIS CLASS HAVE A HIGH CAPABILITY FOR OUTDOOR RECREATION.

Class 2 lands have natural capability to engender and sustain high total annual use based on one or more recreational activities of an intensive nature.

CLASS 3 - LANDS IN THIS CLASS HAVE A MODERATELY HIGH CAPABILITY FOR OUTDOOR RECREATION.

Class 3 lands have natural capability to engender and sustain moderately high total annual use based usually on intensive or moderately intensive activities.

CLASS 4 - LANDS IN THIS CLASS HAVE MODERATE CAPABILITY FOR OUTDOOR RECREATION.

Class 4 lands have natural capability to engender and sustain moderate total annual use based usually on dispersed activities.

CLASS 5 - LANDS IN THIS CLASS HAVE MODERATELY LOW CAPABILITY FOR OUTDOOR RECREATION.

Class 5 lands have natural capability to engender and sustain moderately low total annual use based on dispersed activities.

CLASS 6 - LANDS IN THIS CLASS HAVE LOW CAPABILITY FOR OUTDOOR RECREATION.

Class 6 lands lack the natural quality and significant features to rate higher, but have the natural capability to engender and sustain low total annual use based on dispersed activities.

CLASS 7 - LANDS IN THIS CLASS HAVE VERY LOW CAPABILITY FOR OUTDOOR RECREATION.

Class 7 lands have practically no capability for any popular types of recreation activity, but there may be some capability for very specialized activities with recreation aspects, or they may simply provide open space.

2.7

a. *Prospects for the Georgian Bay Region*, Ministry of Treasury, Economics and Intergovernmental Affairs, Toronto, Ontario, 1972, p. 7.

2.9

a. Under the direction of Ian Miller, the Forestry Branch of the P.E.I. Department of Agriculture and Forestry undertook in April, 1970, a survey of 1,979 woodlot owners, representing a 27.6% potential sample of the 7,195 woodlot owners on the Island.

3.3

a. *An Atlas of Prince Edward Island and the World*, Cummins Map Co., Toronto, no date, but thought to be between 1927 and 1932.

4.2

a. The Land Development Corporation is a Crown Agency established by the provincial government under the Prince Edward Island Development Corporation Act passed by the Legislature in 1969. The L.D.C. is financed by both Provincial and Federal Governments.

The objectives of the Land Development Corporation are:

- to buy farm lands that are offered for sale;
- to buy farms which are too small for efficient agricultural production;
- to assist in the consolidation of farm lands into economic units;
- to provide credit to farmers who want to buy or lease L.D.C. owned lands;
- to assist young farmers to become established on economic units, and
- to remove poor farmland from agriculture use.

As of October 31, 1972, the net available inventory of cleared cultivated land held by the Land Development Corporation amounted to 11,123 acres. With the increase in agricultural prices, particularly for potatoes during the winter and spring of 1972-73, the demand for additional cleared land has reduced this inventory to a mere fraction of the October figure. This is a clear indication of the importance of keeping the good quality cleared land base of the province open and available to the Island farm community.

5.5

a. *High Schools Offering, and Number of Students Enroled in Agricultural Courses, 1972-73 Academic Year*

SCHOOL	GRADE LEVEL	# OF STUDENTS	# OF COURSES
Morell	9 & 10 in 72-73 9,10 & 11 in 73-74 9,10, 11 & 12 in 74-75	58 in Gr. 9 40 in Gr. 10	1 - Elective
Kensington	10 & 12 - General	45 in Gr. 10	1 - Compulsory for general diploma
	10 Conservative		
Athena	10 & 11 in 72-73 10 in 72-73	25	1 - Elective
Ch'town Rural	11 & 12 in 72-73	11 in Gr. 11 3 in Gr. 12	1 - Elective in general diploma and academic
Colonel Gray	11 & 12 in 72-73	25 in Gr. 11 15 in Gr. 12	1 - Elective in general diploma

6.1

a. The following figures are taken from D. B. Coombs *An Appraisal of the Physical Supply of Recreational Lands in the Maritime Coastal Zone*, a paper published in *Coastal Zone, Vol. 1 Selected Background Papers*, Ottawa, 1972, p. 177.

(a) Prince Edward Island - 688 miles.

Class 1, 20%; Class 2, 15%; Class 3, 23%; Class 4, 18%; and the balance of 24% represents Class 5 to 7 or lands in general not suitable for fostering intensive water-oriented recreational activities.

(b) Nova Scotia - 2,517 miles.

Class 1, 1%; Class 2, 4%; Class 3, 10%; and Class 4, 22%; and the balance of 63% as Class 5 to 7.

(c) New Brunswick - 947 miles.

Class 1, 1%; Class 2, 5%; Class 3, 24%; Class 4, 25%, and Class 5 to 7, 45%.

6.4

a. by Lee Gosselin, Land Use Service Centre.

7.1

a. *Citizen Involvement*, a working paper prepared for the Committee for Government Productivity, April, 1972, Government of Ontario.

7.2

a. The January 22, 1973, Throne Speech in the Island legislature gave support to the concept of greater public participation at the local level. [as follows]

> "However, my Government has observed that as the role and influence of the Provincial Government is extended into the social and economic activities of society, there is a corresponding diminution in the weight of the individuals [sic] influence over matters which affect him. While society, through its government, seeks to achieve desirable social and economic objectives, the relationships between the individuals and government become more complex. In endeavouring to cope with this ever increasing complexity, group action is initiated, organizations are formed, and unions are organized in an effort to present group or common points of view to government. In response to this process, decision making has become highly centralized and the individual often views his government as remote, unfeeling and impersonal.
>
> With these considerations in mind, my Government has been examining the relationships between the individual, the community, the Province, the Region and the Nation. My Government believes that the individual citizen has more to contribute to the social, material and political interests of the Province in our second century than our present system and organization of government now allows. Essential to the health and well-being of our Province are strong and well-motivated communities. The strength of these communities depends upon interested, informed and involved members of each community. As an important initiative in our Centennial Year, my Government will seek to determine ways in which individual citizens in both urban and rural areas may more fully participate in the affairs of their communities. To this end, a *Discussion Paper* outlining the broad and general concepts of the decentralization of certain Provincial Government activities, and the delegation of such powers and responsibilities to structured community groups will be tabled for your consideration.
>
> My Government further intends to place this Discussion Paper before the Island community for its consideration an recommendations."

Text of the Discussion Paper is included in Volume III of this Report.

8.3

a. A 1972 *Vacation Residence Survey* undertaken by the Research and Planning Division of the P.E.I. Dept. of Environment and Tourism indicates that 59.09% of the 154 summer home owners interviewed, had formerly resided in Prince Edward Island.

APPENDIX A

An Act to Amend the Real Property Act

Assented to this 14th day of April, 1972

BE IT ENACTED by the Lieutenant-Governor and Legislative Assembly of the Province of Prince Edward Island as follows:

1. Section 3 of the Real Property Act (R.S.P.E.I. 1951 Chapter 133) is hereby repealed and in its place substituted the following:

3. (1) Persons who are not Canadian citizens may take, acquire, hold, convey, transmit, or otherwise dispose of, real property in the Province of Prince Edward Island subject to the provisions of subsection two (2) here next following.

(2) Unless he receives permission so to do from the Lieutenant-Governor-in-Council, no person who is not a resident of the Province of Prince Edward Island shall take, acquire, hold, or in any other manner receive, either himself, or through a trustee, corporation, or any such the like, title to any real property in the Province of Prince Edward Island the aggregate total of which exceeds ten (10) acres, nor to any real property in the Province of Prince Edward Island the aggregate total of which has a shore frontage in excess of five (5) chains.

(3) The grant of any such permission shall be at the discretion of the Lieutenant-Governor-in-Council, who shall notify the applicant in writing by means of a certified copy of an Order-in-Council of his decision within a reasonable time.

(4) An application for any such permission shall be in the form prescribed, from time to time, by the LieutenantGovernor-in-Council.

(5) (a) For the purpose of this section, "Canadian citi zens" means persons defined as Canadian citizens by the Canadian Citizenship Act (R.S.C. 1970, Vol. 1, Cap. C-19).

(b) For the purposes of this section, "resident of the Province of Prince Edward Island" means a bona fide resident, animum et factum, of the Province of Prince Edward Island.

(c) For the purposes of this section, "corporation" means any company, corporation, or other body corporate and politic, and any association, syndicate or other body, and any such the like, and the heirs, executers, administrators of such person, as such is defined and included in the Domiciled Companies Act (Laws of Prince Edward Island 1962)

APPENDIX B

Written Briefs and Letters from Organizations and Individuals

Agriculture Canada Research Station, Professional Staff
ALLISON, James Architects Association of P.E.I.
BAIN, John
BISHOP, Stanley
BRADLEY, L.
BREWER, Tom
Brothers and Sisters of Cornelius Howatt
CAMPBELL, Melville
Charlottetown Area Development Committee
Charlottetown Chamber of Commerce
City of Charlottetown Planning Board
Civil Liberties Association
COFFIN, Edgar
CONEEN, A.
CONNOR, Kirsten F. (Mrs.)
CONNOR, Tom
CROWSON, D. R.
DARLINGTON, David E.
DAVIES, Chet
DINGWELL, Brian
DOUSSE, Bernard
EVANS, Gerry
Federation of Agriculture
Federation of Labour
FLEMMING, Neil
GAUDET, Frank
GAVIN, Ignatius
GILMORE, John
GLAUDE, Pierre
GORMAN, Eugene
GREEN, John Eldon
GROSE, Rex
HAMMING, Anco
Heritage Foundation
HISCOCK, Art
HOWATT, Everett (Mrs.)
JAY, Bill
Land Development Corporation
Land Owners (West Prince Group)
LANE, Michael
LEARD, Roy
LOVERING, James

MACDONALD, Alvin
MACKAY, Wendell
MACKENZIE, Ross
MACKNIGHT, Paul
MACLEOD, Ian
MACNEIL, George
MACQUARRIE, Ian
MAXWELL, J.
MILLAR, Ian
MILLER, Greg
Montague Town Planning Committee
MORRISON, Alfred
MORRISON, David E.
MOSS, David
MURRAY, Doug
MUTTER, Beverly
MUTTER, Roy
National Farmer's Union
O'CONNELL, Harry
PARENT, Robert C.
PEARSON, Tyrrell
P.E.I. Institute of Agrologists
P.E.I. Law Society
P.E.I. Real Estate Association
P.E.I. Tourist Association
PENDERGAST, Austin
PHILLIPS, William
PREBBLE, Peter
RAAD, Awni
Rural Beautification Council
Rural Development Council
RYAN, Aquinas
RYLE, Gerry
SEELY, Neil
Social Action Steering Committee
Southern King's and Queen's Fishermen's Association
SCHWARTZ, Frank
VASS, Stanley
WALKER, Tom
WHITE, Robin
WIGHTMAN, Arnold
Women's Institute
WORNELL, Keith
WULFF, Cliff

APPENDIX C

Statistical Data on Non-Resident Landholdings in P.E.I.

Table 1

Acreage of Non-Resident Landholdings, March 2, 1973

	Prince County	Queens County	Kings County	County Unknown	Total
Canadian*	14,599.9	15,022.4	17,796.6		47,418.9
American	6,589.6	12,748.5	15,457.3	95.8	35,161.2
Other Non-Canadian	---	121.6	51.0		172.6
Address Unknown	113.1	146.6	95.0		354.7
Total	21,572.6 +2,588.7**	28,039.1 +3,364.7**	33,399.9	95.8	83,107.4
Revised Total	24,161.3	31,403.8	33,399.9	85.8	89,060.8

Table 2

Non-Resident Landholdings, March 2, 1973

	Prince County	Queens County	Kings County	County Unknown	Total
Canadian***	508	758	534		1800
American	239	411	447	3	1100
Address Unknown	7	5	3		15
Other	-	12	2		14
Total	754 +90	1186 +142**	986	3	2929
Revised Total	844	1328	986	3	3158

* Not including 93.6 acres Government of Canada holdings.

** A recently completed check and amendment of postal addresses on all King's County tax notices, resulted in an increase of 12% in the acreage of non-resident holdings in that county. On the basis of this information, the acreages and numbers of holdings for Prince and Queen's counties have been raised also by 12% to arrive at the revised totals in these tables.

*** Not including 40 Government of Canada holdings.

Table 3

Land Sales of More than 10 Acres or More Than 5 Chains Shorefrontage to Non-Residents of P.E.I. Under The P.E.I. Real Property Act - Petitions #8-#244 January 1, 1972 - December 31, 1972

PETITIONS

	Approved	Denied	Under Consideration	Total Submitted
Canadian	84	16	8	108
American	93	20	9	122
Other	4	2	-	6
Total	181	38	17	236

ACREAGE

	Approved	Denied	Under Consideration	Total Submitted
Canadian	4,902.95	1,292.00	812.00	7,006.95
American	5,515.00	5,089.50	1,888.00	9,492.60
Other	502.00	323.00	---	825.00
Total	10,920.05	6,704.50	2,700.00	17,324.55

SHORE FRONTAGE (IN FEET)

	Approved	Denied	Under Consideration	Total Submitted
Canadian	34,208.0	5,800.0	10,910.0	50,918.0
American	48,349.0	6,968.0	1,400.0	56,717.0
Other	2,296.0	1,320.0	---	3,616.0
Total	84,853.0	14,088.0	12,310.0	111,251.0

Average Number of Acres per Petition - +/- 70.44 Acres

Average Length of Frontage per Petition - +/- 1,278.75 Feet (only 87 of the total 236 Petitions included shore frontage)

REASONS FOR DENIAL OF 38 NON-RESIDENT PETITIONS FOR LAND PURCHASE, JAN. 1, 1972 - DEC. 31, 1972

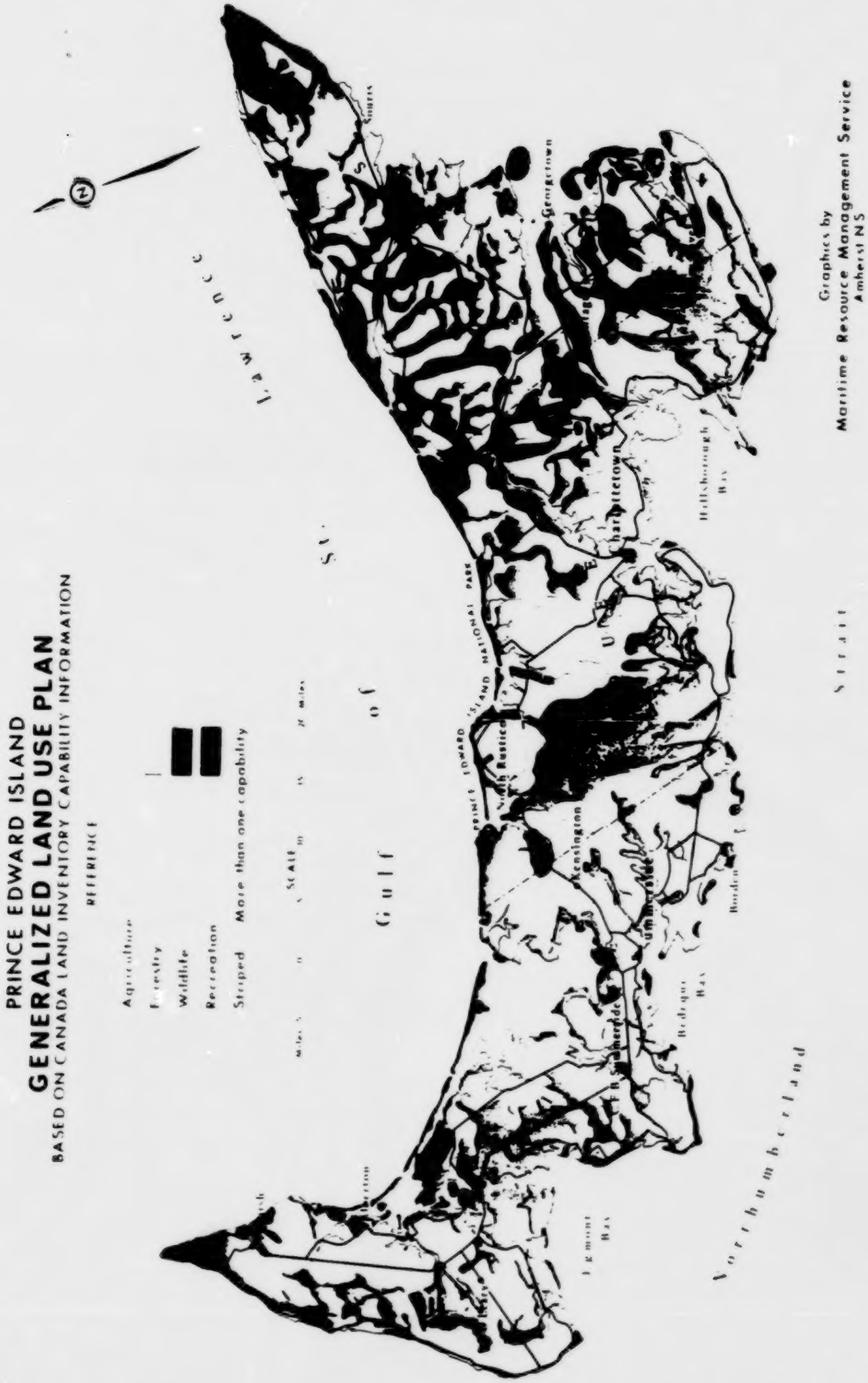
21% - farm (Consolidated Programs)

21% - Speculation (attempting to avoid this)

31% - Forestry (Consolidation Programs)

8% - Wildlife (Preservation)

19% - Recreation (Park Development or beach access)


PRINCE EDWARD ISLAND
GENERALIZED LAND USE PLAN
BASED ON CANADA LAND INVENTORY CAPABILITY INFORMATION
REFERENCE
Agriculture
Forestry
Wildlife
Recreation
Striped More than one capability
SCALE
miles
Gulf of St. Lawrence
Northumberland Strait
PRINCE EDWARD ISLAND NATIONAL PARK
Souris
Georgetown
Charlottetown
Hillsborough Bay
North Rustico
Kensington
Summerside
Borden
Bedeque Bay
Egmont Bay
Alberton
Tignish
Graphics by
Maritime Resource Management Service
Amherst NS
1973

APPENDIX H

Briefs Presented to Royal Commission on the Land at Public Hearings

P.E.I. Institute of Agrologists	3 April 1989
Atlantic Planners Institute	3 April 1989
National Farmers' Union	3 April 1989
Friends of the Island	10 April 1989
Deacon, Donald	10 April 1989
Vass, Stanley E	10 April 1989
Potato Producers' Association of P.E.I	10 April 1989
P.E.I. Museum & Heritage Foundation	17 April 1989
Latin American Mission Program	17 April 1989
Women's Network	17 April 1989
P.E.I. Federation of Agriculture	17 April 1989
Island Rail Foundation	17 April 1989
Revell, James T.	17 April 1989
Island Nature Trust	17 April 1989
Committee for the Return of Abandoned Railroad Lands to Agriculture	24 April 1989
P.E.I. Environmental Advisory Council	24 April 1989
P.E.I. Real Estate Association	24 April 1989
Carver, Horace B., Q.C.	24 April 1989
Cooper Institute	24 April 1989
Social Action Commission	24 April 1989
P.E.I. Fishermen's Association	24 April 1989
P.E.I. Women in Support of Agriculture	24 April 1989
Maloney, Barry J.	1 May 1989
Bryan, Frank J	1 May 1989
d'Amour, Therese	1 May 1989
West Prince Branch of Women in Support of Agriculture	1 May 1989
West Prince Chamber of Commerce	1 May 1989
P.E.I. Federation of Flyfishers	15 May 1989

Rogers, Gordon	15 May 1989
Malpeque, Community of	15 May 1989
Farmer & Clergy Working Group	15 May 1989
Borden, Town of	15 May 1989
Wootton, Lt. Col. Patrick A	23 May 1989
MacLean, Hon. J. Angus, P.C.	23 May 1989
P.E.I. Wildlife Federation	23 May 1989
Island Snowmobile Club Inc.	23 May 1989
Smith, Kip	23 May 1989
Page, Michael	23 May 1989
Belle River Environmental Protection Assoc	23 May 1989
Natural History Society of P.E.I	30 May 1989
Eastern Kings Community Advisory Board	30 May 1989
Church in Society Committee	30 May 1989
P.E.I. Cattlemen's Association	30 May 1989
Heuretz, Linda	30 May 1989
Clatterbaugh, Kenneth	30 May 1989
Charlottetown, City of	1 June 1989
Cavendish Farms	1 June 1989
West Royalty, Community of	1 June 1989
Cornwall, Community of	1 June 1989
Alexandra, Community of	1 June 1989
Greater Charlottetown Area Chamber of Commerce	1 June 1989
Connor, Kirsten F	2 June 1989
Tourism Industry Association of P.E.I	2 June 1989
Hennessey, Catherine	2 June 1989
Weale, David	2 June 1989
Association Against Double Taxation	2 June 1989
Strain, J. Frank, Sr	2 June 1989
Representatives of Downtown Businesses	8 June 1989

Written Submissions
to
Royal Commission on the Land
without
Further Presentation

Campbell, Melville

Charlottetown Area Development Corporation

Hooff, Sally Blake

La Societe Saint-Thomas D'Aquin

Oakland Ventures Inc. & Darrach Real Estate

P.E.I. Council of Labour

P.E.I. Women's Institute

Sisam, David

APPENDIX I

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